IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BCG, INC. and CHESAPEAKE PRODUCTS & SERVICES, Plaintiffs, v. GLES, INC. d/b/a SWEET OIL COMPANY, Defendant/Third-Party Plaintiff, v. SUNOCO, INC., Third-Party Defendant.	:	C.A. No. 07-cv-207 (GMS) TRIAL BY JURY OF TWELVE DEMANDED NON-ARBITRATION CASE

THIRD-PARTY DEFENDANT'S OPENING BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT ON COUNT I OF THE AMENDED THIRD-PARTY COMPLAINT PURSUANT TO FED. R. CIV. P. 56

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Dated: April 7, 2008

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I. NATURE AND STAGE OF THE PROCEEDINGS

On October 19, 2006, Plaintiffs, BCG, Inc. and Chesapeake Products & Services, Inc. (hereinafter collectively referred to as "BCG") sued GLeS, Inc. d/b/a Sweet Oil (hereinafter referred to as "Sweet Oil") in the Court of Common Pleas, Kent County, Delaware for, among other things, breach of a Dealer Agreement dated October 3, 2002 ("Dealer Agreement"), tortious interference with contract, and violations of Delaware Franchise Security Law. BCG owned and operated a Mobil branded retail motor fuel facility located at 9521 Ocean Highway, Delmar, Maryland (hereinafter referred to as the "Delmar Station") and, by the terms of the Dealer Agreement, contracted with Sweet Oil to supply it with Mobil branded motor fuel for resale at the Delmar Station. Sweet Oil purchased Mobil branded motor fuel from Third-Party Defendant Sunoco, Inc. (R&M) (hereinafter referred to as "Sunoco") pursuant to a Mobil Branded Distributor Agreement dated September 18, 2000 ("Distributor Agreement"). The Distributor Agreement also contained a license permitting Sweet Oil to use the Mobil trademarks in connection with the sale of motor fuel at three retail facilities, including the Delmar Station and another retail motor fuel facility not operated by the Plaintiffs located at 5610 Market Street, Snow Hill, Maryland (hereinafter referred to as the "Duck-In Station").

Sweet Oil and Sunoco (by reason of certain and separate assignments) were also parties to two Tosco Distributor Incentive Agreements which entitled Sweet Oil to receive any incentive payments due from Sunoco on and after the assignment from Sweet Oil's predecessor for its purchases of Mobil branded motor fuel for resale to the Delmar and Duck-In Stations. With respect to sales of motor fuel at the Delmar Station, Sweet Oil agreed to pass the incentive payments it received under the Incentive Agreement on to BCG. (Dealer Agreement at ¶ 2(b), attached as Exhibit "4" to Statement of Undisputed Facts, D.I. 38 at ¶ 11).

Sweet Oil answered the Complaint and denied any liability to BCG. However, it joined Sunoco to the cause of action by filing a Third-Party Complaint seeking to interplead the amount of incentive payments due but not paid to BCG under the Dealer Agreement, for a declaration of the parties' rights and liabilities with respect to the Delmar Station, and for indemnity. Sunoco filed an answer to the Third-Party Complaint denying any liability to Sweet Oil.

On March 1, 2007, BCG filed an Amended Complaint stating a claim against Sweet Oil for violation of the Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801, et seq. ("PMPA"). Thereupon, Sweet Oil removed the case to federal court pursuant to 28 U.S.C. § 1444 (2006).

Following removal, Sweet Oil amended the Third-Party Complaint to include additional allegations concerning the Duck-In Station and substituting a conversion claim for its interpleader claim. (Am. Compl., D.I. 23). Sweet Oil voluntarily dismissed its indemnification claim after Sunoco filed a Rule 12(b)(6) motion to dismiss. (Mot. to Dismiss, D.I. 25 & Stipulation, D.I. 27). Sunoco filed an answer to the Amended Third-Party Complaint again denying any liability to Sweet Oil on the remaining declaratory judgment and conversion claims. (Answer, D.I. 30). Discovery has concluded and Sweet Oil's declaratory judgment claim is ripe for summary adjudication.

By its motion for summary judgment, Sunoco respectfully requests this Court to declare that the non-renewal of the Distributor Agreement and the debranding of the Delmar and Duck-In Stations entitled Sunoco to liquidated damages under the respective Incentive Agreements.

II. SUMMARY OF ARGUMENT

1. The Incentive Agreements obligate Sweet Oil to reimburse Sunoco 100% of the incentive payments it received if the Distributor Agreement between them should non-renew or terminate or if the Delmar or Duck-In Stations should debrand within the first 5 years of the Incentive Agreements' effective dates. The non-renewal of the Distributor Agreement and the debranding of the Delmar and Duck-In Stations within five years of the Incentive Agreements' effective date triggered Sweet Oil's obligation to pay Sunoco liquidated damages, thus, entitling Sunoco to judgment as a matter of law on Sweet Oil's declaratory judgment claim. Since the material facts are undisputed, Sunoco respectfully requests this Court to declare that Sunoco is entitled to liquidated damages from Sweet Oil.

III. STATEMENT OF THE FACTS

A. Agreements Between Sunoco and Sweet Oil.

On April 28, 2004, Conoco Phillips assigned all of its right, title, and interest under a Mobil Branded Distributor Agreement (the "Distributor Agreement") and two Tosco Distributor Incentive Program Agreements ("Incentive Agreements") it had with Peninsula Oil Company ("Peninsula") to Sunoco. (Distributor Agreement, Delmar Incentive Agreement dated Feb. 25, 2002, and Incentive Agreement dated May 2, 2001, attached as Exhibits "1," "2," and "3" to Statement of Undisputed Facts, D.I. 38 at ¶¶ 3, 6, 8). Under the terms of the Incentive Agreements, Sunoco paid Peninsula an incentive payment for each gallon of motor fuel Peninsula sold to the Delmar and Duck-In Stations. (Am. Comp., D.I. 23 at ¶ 10; Delmar Incentive Agreement dated Feb. 25, 2002 and Incentive Agreement dated May 2, 2001, Ex. 2 & 3 to Statement of Undisputed Facts, D.I. 38 at ¶¶ 6, 8). Importantly, for purposes of this motion, the Incentive Agreements provide, in pertinent part, as follows:

> Distributor recognizes that it would be difficult to quantify [Sunoco]'s economic losses if Distributor's franchise relationship terminated or non-renewed or the retail facility debranded. Thus, Distributor agrees that if Distributor's contract is terminated/non-renewed, or the retail facility is debranded within ten (10) years after the first month Distributor reports volume for incentive payment purposes, Distributor will pay to [Sunoco] liquidated damages, to compensate for such losses. . . . (Delmar Incentive Agreement dated Feb. 25, 2002 and Incentive Agreement dated May 2, 2001, Ex. 2 & 3 to Statement of Undisputed Facts, D.I. 38 at ¶¶ 6, 8).

Peninsula was obligated to pay back the incentive payments to Sunoco on a fixed amortization schedule if the Distributor Agreement was terminated or non-renewed, if the Delmar Station was debranded prior to July 31, 2012, or if the Duck-In Station was debranded prior to March 31, 2011. (Am. Compl., D.I. 23 at ¶ 11; Delmar Incentive Agreement dated Feb. 25, 2002 and Incentive Agreement dated May 2, 2001, Ex. 2 & 3 to Statement of Undisputed Facts, D.I. 38 at ¶¶ 6, 8).

On August 31, 2005, Sweet Oil purchased, among other things, Peninsula's right, title, and interest in the Distributor Agreement and the Incentive Agreements through an Assignment and Assumption Agreement ("Assignment Agreement"). (Assignment and Assumption Agreement at ¶ 2, attached as Exhibit "6" to the Statement of Undisputed Facts, D.I. 38 at ¶ 16). Sweet Oil signed the Assignment Agreement with full knowledge that the Delmar and Duck-In Stations were subject to the Incentive Agreements and that the full amortization dates for the incentive payments were July 31, 2012 and March 31, 2011, respectively. (*Id.* at ¶ 7). Importantly, Sweet Oil knew the Distributor Agreement would expire on September 30, 2005 and would not be renewed under the Mobil trademark. (*Id.* at ¶ 2). Instead, Sweet Oil agreed that the Delmar and Duck-In Stations, among others, would be "promptly" rebranded Sunoco. (*Id.* at ¶ 3).

B. Non-Renewal of the Distributor Agreement and Debranding of the Stations.

Despite their stated intentions in the Assignment Agreement, the Distributor Agreement was not non-renewed at the end of September, 2005. Rather, in order to allow for an orderly transition from the Mobil to the Sunoco brand, Sunoco and Sweet Oil extended the Distributor Agreement on a month by month basis. (Am. Comp., D.I. 23 at ¶ 6). From September 2005 until late in 2006, Sweet Oil made frequent and repeated efforts to rebrand the Delmar Station to Sunoco. Sunoco assisted Sweet Oil in this effort by offering to waive its right to demand liquidated damages under the Incentive Agreements if the Delmar Station would rebrand Sunoco. (March 26, 2008 deposition of Mark Greco ("Greco Deposition"), 224:11-225:12, attached hereto as Exhibit "A"). Sunoco also offered to pay for all brand conversion expenses and an additional incentive payment if BCG would sign a new Dealer Agreement with Sweet Oil under the Sunoco brand.[1] BCG refused to rebrand the Delmar Station to Sunoco.

On November 2, 2006, Sunoco informed Sweet Oil that the Distributor Agreement would be terminated and non-renewed as of February 2, 2007 due to the fact that Sunoco's license to use the Mobil trademarks would expire at the end of February, 2007. (Letter dated Nov. 2, 2006, attached as Exhibit "9" to the Statement of Undisputed Facts, D.I. 38 at ¶ 25). On February 2, 2007, Sweet Oil debranded the Delmar and Duck-In Stations as Mobil stations by removing all indicia of the Mobil trademarks. (Greco Dep., 247:4-14, Ex. A; Statement of Undisputed Facts, D.I. 38 at ¶ 33). Thereafter, these stations sold unbranded motor fuel to the motoring public.

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[1] Both the Distributor Agreement and Dealer Agreement allowed Sunoco and Sweet Oil, respectively, to change the brand of motor fuel they supplied. (Distributor Agreement at ¶6(B) & ¶11(C), and Dealer Agreement at ¶8, Ex. 1 & 4 to the Statement of Undisputed Facts, D.I. 38 at ¶¶ 3, 11). Thus, Sunoco could supply the Delmar Station, through Sweet Oil, with Sunoco branded motor fuel until the Dealer Agreement expired in 2012. Sunoco preferred that BCG sign a new Dealer Agreement with Sweet Oil pursuant to which it expressly agreed to purchase and resell Sunoco branded motor fuel to the motoring public.

Upon the non-renewal of the Distributor Agreement and the debranding of the stations, Sunoco became entitled to a return of the incentive payments as liquidated damages pursuant to the express terms of the Incentive Agreements.

IV. ARGUMENT

The non-renewal of the Distributor Agreement and the debranding of the Delmar and Duck-In Stations entitles Sunoco to liquidated damages based on a plain reading of the Incentive Agreements. The Distributor Agreement was terminated and non-renewed as of February 2, 2007 and the Delmar and Duck-In Stations were debranded prior to the full amortization date of the incentive fees. These material facts are not in dispute. The occurrence of each of these events obligated Sweet Oil to pay liquidated damages to Sunoco, therefore, entitling Sunoco to judgment as a matter of law on Sweet Oil's declaratory relief claim.

A. Legal Standard

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Boyle v. County of Allegheny, Pa., 139 F.3d 386, 392 (3d Cir. 1998). Summary judgment is appropriate when the moving party shows that there are no genuine issues of material fact that would permit a reasonable jury to find for the non-moving party. Boyle, 139 F.3d at 392.

In deciding a motion for summary judgment, the court must construe all facts and inferences in the light most favorable to the nonmoving party. Assaf v. Fields, 178 F.3d 170, 173-74 (3d Cir. 1999). However, the party opposing a properly supported motion for summary

judgment may not rest upon the mere allegations of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). There must be "sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-50 (internal citations omitted).

B. Sunoco is Entitled to Summary Judgment on the Declaratory Judgment Claim Because the Incentive Agreements Obligate Sweet Oil to Pay Sunoco Liquidated Damages

The Declaratory Judgment Act permits this Court to declare the rights and duties of the parties with respect to contractual disputes. 28 U.S.C. § 2201 (2006); See Johnson v. Geico Cas. Co., 516 F. Supp. 2d 351, 357 (D. Del. 2007). This Court has jurisdiction over this action pursuant to the PMPA. See N.I. Petroleum Ventures Corp. v. GLeS, Inc., 333 F. Supp. 2d 251, 253 (D. Del. 2004).

Sunoco is entitled to summary judgment because the non-renewal of the Distributor Agreement and the debranding of the Delmar and Duck-In Stations obligated Sweet Oil to pay liquidated damages to Sunoco. A termination and/or non-renewal of the Distributor Agreement or a debranding of the stations entitles Sunoco to liquidated damages pursuant to the plain language of the Incentive Agreements. The Distributor Agreement was terminated and non-renewed and the facilities were debranded on February 2, 2007. These events triggered Sweet Oil's contractual obligation to pay Sunoco liquidated damages under the Incentive Agreements.

a. The Incentive Agreements Are Clear and Unambiguous.

Contract interpretation is a question of law for the court to decide. O'Brien v. Progressive N. Ins. Co., 785 A.2d 281, 286 (Del. 2001). Under Delaware law, contract provisions are only considered ambiguous when the terms are "reasonably or fairly susceptible of different interpretations or may have two or more different meanings." E.I. du Pont de Nemours & Co. v. Allstate Ins. Co., 693 A.2d 1059, 1061 (Del. 1997).

Here, the contractual provisions are not only clear on their face, but there is no factual dispute between the parties regarding the provision that triggered Sweet Oil's obligations to repay the incentive payments. The Incentive Agreements specifically provide that if the Distributor Agreement is "terminated/non-renewed, or the retail facility is debranded within ten (10) years," Sweet Oil will reimburse Sunoco for all incentive payments paid for the Delmar and Duck-In stations as liquidated damages. (Delmar Incentive Agreement dated Feb. 25, 2002 and Incentive Agreement dated May 2, 2001, Ex. 2 & 3 to Statement of Undisputed Facts, D.I. 38 at ¶¶ 6, 8). The amount of the liquidated damages depends on the length of time the Incentive Agreement was in effect and a schedule in the Incentive Agreements allows the parties to easily calculate the amount due. (*Id.*)

The terms contained in the pertinent section of the Incentive Agreements are plain and clear. A termination or non-renewal of the Distributor Agreement is a discontinuance of the contractual relationship between the parties. Debranding is a term of art used in the motor fuel industry and simply means to remove or cover all indicia of a trademark associated with a particular brand of motor fuel at a retail motor fuel facility. (Greco Dep., 235:15-22, Ex. A). In this case, the term meant to remove or cover any and all indicia of the Mobil trademark from the Delmar or Duck-In Stations. Sweet Oil, as an experienced motor fuel distributor, understood that Sunoco was entitled to a return of the incentive moneys if, and when, the Distributor

Agreement terminated or non-renewed or the Delmar and Duck-In Stations no longer sold Mobil branded motor fuel. (*Id*. at 235:3-13).

b. The Non-renewal of the Distributor Agreement and the Debranding of the Facilities Entitled Sunoco to Liquidated Damages.

The non-renewal of the Distributor Agreement entitled Sunoco to liquidated damages. Sweet Oil does not dispute that the Distributor Agreement was non-renewed on February 2, 2007. Under the plain language of the Incentive Agreements, Sunoco is and was entitled to reimbursement of the incentive payments from Sweet Oil as liquidated damages upon the occurrence of the non-renewal of the Distributor Agreement.

Any debranding of the subject facility, regardless of the reason for the debranding, entitled Sunoco to return of the incentive payments as liquidated damages. (Delmar Incentive Agreement dated Feb. 25, 2002 and Incentive Agreement dated May 2, 2001, Ex. 2 & 3 to Statement of Undisputed Facts, D.I. 38 at ¶¶ 6, 8). Specifically, Sunoco was entitled to liquidated damages if the Delmar Station was debranded prior to July 31, 2012 or the Duck-In Station was debranded prior to March 3, 2011. (Delmar Incentive Agreement dated Feb. 25, 2002, Incentive Agreement dated May 2, 2001, and Dealer Agreement at ¶ 7, Ex. 2, 3, & 4 to the Statement of Undisputed Facts, D.I. 38 at ¶¶ 6, 8, 11). In February 2007, Sweet Oil debranded the Delmar and Duck-In Stations, more than four years prior to the full amortization of the incentive payments. Sweet Oil does not dispute these facts. As a result of the debranding, Sunoco was entitled to full reimbursement of all incentive payments made for the two retail facilities as liquidated damages under the Incentive Agreements. (Delmar Incentive Agreement dated Feb. 25, 2002 and Incentive Agreement dated May 2, 2001, Ex. 2 & 3 to Statement of Undisputed Facts, D.I. 38 at ¶¶ 6, 8).

V. CONCLUSION

For the foregoing reasons, Sunoco respectfully requests that this Court grant its motion for summary judgment in Sunoco's favor pursuant to Rule 56 of the Federal Rules of Civil as there is no genuine issue as to any material fact and Sunoco, Inc. (R&M) is entitled to judgment as a matter of law. Sunoco respectfully requests that this Court declare that the non-renewal of the Distributor Agreement and the debranding of the Delmar and Duck-In Stations entitled Sunoco to liquidated damages under the respective Incentive Agreements.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2008, a copy of Third-Party Defendant, Sunoco, Inc. (R&M)'s Opening Brief in Support of its Motion for Summary Judgment on Count 1 of the Amended Third-Party Complaint Pursuant to Fed. R. Civ. P. 56 was served electronically upon the following counsel of record via *CM/ECF:*

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EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BCG, INC. and CHESAPEAKE PRODUCTS & SERVICES, INC., Plaintiff,	)
v.	) Civil Action No. 07-CV-207 (GMS)
GLES, INC., d/b/a SWEET OIL COMPANY, Defendant/Third-Party Plaintiff,	)
v.	)
SUNOCO, INC., Third-Party Defendant	)

Deposition of MARK GRECO, taken pursuant to notice at the law offices of Young, Conaway, Stargatt & Taylor, The Brandywine Building, 1000 West Street, Wilmington, Delaware, beginning at 10:00 a.m., on Wednesday, March 26, 2008, before Terry Barbano Burke, RMR-CRR and Notary Public.

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BILL SWEET

\- - -

MARK GRECO,

the deponent herein, having first been duly sworn on oath, was examined and testified as follows:

BY MR. STORM:

Q. Mr. Greco, good morning. Would you state your full name and home address, please.

A. It's Mark Greco, 25 Wendy Way, Sewell, New Jersey.

Q. How about your business address?

A. The current today is 4501 Route 42, Suite No. 2, Turnersville, New Jersey.
Q. What business is at that address?
A. There are several businesses at that address. Specifically this -- are you asking about Sweet Oil?
Q. What business are you engaged in at that address, at the 4501 Route 42 address?
A. I own several different businesses.
Q. What are those?
A. GLeS, Incorporated; Primo Properties, LLC; MLG Realty, LLC; and For Sale Realty, LLC.
Q. What does Primo Properties do?
A. Primo Properties is a land holding company and property management company.
Q. Is it affiliated in some way with GLeS?
A. Yes. Primo Properties owns many properties that were leased to GLeS during its operation as Sweet Oil.
Q. And does Primo Properties still own any operating service stations?
A. Yes.
Q. Are those stations operated or affiliated at this time with GLeS?
A. No.

Q. Was there some transaction within the last couple of years where that changed?

A. Yes. At one point Primo Properties leased gas stations to GLeS, and on March 7th of last year, GLeS sold its operational business to another company.

Q. What company was that?

A. GPM Investments, LLC.

Q. Did GPM step into GLeS's shoes with respect to those Primo Properties' locations?

A. The relationship between Primo and GLeS was terminated by mutual termination, and then Primo negotiated a new ground lease with GPM.

Q. But those sites that Primo controlled and that were formerly leased to GLeS as gas stations are still operating as gas stations, only through GPM at this time?

A. Yes.

Q. Who owns Primo Properties?

A. Ben LeRoy, William Sweet, and myself.

Q. I take it it has a separate corporate existence or organizational existence from GLeS?

A. Yes.

Q. Is that a Delaware entity, do you know?

A. Yes.

Q. Is GLeS still in business at this time?
A. Yes.
Q. What does it do at this time?
A. GLeS owns two properties which it leases to GPM Investments.
Q. It is no longer involved in the supplying of motor fuel?
A. No.
Q. The two properties that it owns, that it leases to GPM, where are those located?
A. In New Castle County, Delaware.
Q. The transaction that occurred in March, I guess, 2007 between GLeS and GPM, was that an asset sale?
A. It was a sale of business assets, equipment and supply contracts.
Q. Either of the locations that are involved in this litigation, the Laurel Oasis location or the Delmar location, was there anything in the GPM transaction with GLeS related to those two sites?
A. Originally they were going to be included in the sale, but they were excluded because of the breach of agreements.
Q. So the transaction that ultimately occurred

between GPM and GLeS did not include anything with respect to the Laurel Oasis or Delmar locations?

A. No, it did not.

Q. Was there any adjustment to the purchase price between GPM and GLeS as a result of those two locations not being part of a package that was sold?

MR. HUTCHISON: Objection to foundation on that. There's no indication, it was part of it originally as part of the price. To say there's an adjustment, I think is perhaps --

MR. STORM: Maybe I can lay a better foundation. I thought I understood him to say that originally they had been part of the package and then they were later excluded.

THE WITNESS: It was our intention to sell all of the supply agreements, but due to the breach on the two agreements, we were forced to exclude them from negotiation.

BY MR. STORM:

Q. And was there any adjustment made on the price as a result of those locations being excluded?

A. No. They were excluded prior to coming up with price.

MR. STORM: I think, and we can go back

and check, but I think that we had in the document request requested documents with respect to that transaction, and I don't believe that there was anything produced in connection with that. I think that those documents are relevant. Not all of the documents, obviously, but certainly any of the original drafts of the documents and the ultimate purchase documents as related to these locations I think are relevant.

So we can talk some more on a break about that, but I think that insofar certainly as the price, there may have been adjustment in the price from the initial price that was agreed upon and the ultimate price, I think it certainly is relevant to the question of the damages here.

MR. HUTCHISON: We can talk about that.

MR. STORM: Okay.

BY MR. STORM:

Q. Mr. Greco, let me direct your attention to Exhibit 1 that's in front of you there, which is the deposition notice, the original deposition notice, which I don't think was formally amended. But I just want to establish on the record that you are here on behalf of GLeS, Inc., doing business as Sweet Oil

Company, to testify about the seven categories of items that are set forth in the notice?
A. Yes.
Q. And you believe to be knowledgeable about all of those areas; is that right?
A. Yes.
Q. I'd like to ask you a little bit, try to understand some of the background about GLeS. Can you tell me when it was formed?
A. April of 1997.
Q. And were you and Mr. Sweet and Mr. LeRoy all founders, if you will, of the organization?
A. Yes.
Q. At the time that GLeS was formed, were you already in the motor fuels business at that time?
A. Yes, each of us were.
Q. Together in some way or separately?
A. Separately.
Q. Tell me what everybody was doing generally.
A. Both Bill and Ben were long-time gasoline retailers. I was, more recently had become a gasoline retailer. Previous to that, I was actually working for Texaco as a sales representative, franchise consultant.
Q. And how many retail sites did you operate at

that time in '97?
A. I think in '97 I only had one. Either one or two. I'm not sure.
Q. Of the locations that the three of you operated in some way, were any of those sites locations where the individuals or their entities controlled the real estate?
A. Yes.
Q. As opposed to being a lessee dealer of an oil company?
A. Yes.
Q. So you had one site, and how many sites did Mr. LeRoy operate, do you know?
A. At the time we formed the company?
Q. Right.
A. I don't know. It was either one or two. I couldn't tell you exactly.
Q. And then Mr. Sweet operated some sites too?
A. Yes.
Q. How many did he operate, do you know?
A. I think it was two, but I'm not sure.
Q. At the time that the three of you came together, what was the objective in bringing the three together, what was GLeS going to do?

A. Initially we were going to build and/or buy a service station collectively together and be supplied by an oil company. And later it evolved into an opportunity for us to supply ourselves.
Q. And ultimately then you became a jobber or a distributor of some kind?
A. Yes, through Amoco.
Q. When was that, do you remember?
A. It was early '97. I couldn't tell you exactly when.
Q. Mr. LeRoy or Mr. Sweet, had their background been with an oil company like yours with Texaco?
A. Only as dealers.
Q. So GLeS becomes an Amoco distributor at some point?
A. Yes.
Q. I'm sorry, what year was that?
A. 1997.
Q. Did you then also undertake to obtain other supply accounts?
A. Yes.
Q. How many supply accounts ultimately with Amoco do you think you acquired?
A. In 1997?

Q. Well, from the time that you started in '97 until the time that you sold to GPM, sort of take me through the history of the company, what happens with it?

A. We continually went out and negotiated supply agreements with independent dealers who owned their own properties, as well as acquiring locations or leasing locations and continuing to grow our distribution business.

GLeS -- I'm trying to think -- maybe can you tell me exactly what you're trying to get?

Q. So you went out and you obtained supply agreements with dealers who controlled their real estate; right?

A. Yes.

Q. Did you continue to acquire locations through GLeS yourself where you acquired the interest in the real estate?

A. GLeS only owned a couple of locations. We formed a real estate company, which was designed to be a real estate holding company. GLeS wasn't intended to purchase the real estate.

Q. Was that Primo?

A. Yes.

Q. And how many sites did Primo acquire that GLeS ultimately supplied?
A. Off the top of my head, I couldn't tell you.
Q. More than ten?
A. Yes, more than ten.
Q. More than 20?
A. Somewhere in the 20's, I would say. I couldn't tell you exactly without looking.
Q. By the time we get to 2007 when you do the transaction with GPM, there would have been locations where GLeS and/or Primo controlled the real estate; right?
A. Yes.
Q. And then there would have been locations where GLeS was supplying motor fuel to others who controlled the real estate; right?
A. Correct.
Q. How many locations were there at that time of each of those categories?
A. Off the top of my head, I couldn't tell you a breakdown.
Q. Give me just an approximate number.
A. We had ground leases, we had some fee sites, we had some supply sites. I couldn't tell you a

breakdown off the top of my head.
Q. Of the sites that were transferred to GPM, you have no idea how many locations were involved in the transaction?
A. I believe only one gas station was transferred to them, the real estate. The rest were supply agreements and leases.
Q. How many was that, more than 50?
A. All combined?
Q. Yes.
A. Yes.
Q. More than 75?
A. No.
Q. So somewhere between 50 and 75 sites that were supplied by Sweet Oil?
A. Yes.
Q. Do you recall in 2007 what kind of volume Sweet Oil was doing on an annual basis?
A. Approximately 55 million gallons.
Q. Let's go back. You mentioned that you became a distributor for Amoco?
A. Yes.
Q. I assume, then, that that ultimately became the BP brand when BP acquired Amoco; is that right?

A. Yes.
Q. Did GLeS become a distributor for any other oil companies?
A. Yes.
Q. Which ones?
A. With Coastal Refining & Marketing. With Sunoco. With ExxonMobil. With CITGO. And I believe that was it.
I'm sorry, excuse me, in addition Tosco.
Q. Was the ExxonMobil distributorship separate and apart from that with Tosco?
A. Yes. We supplied Exxon through ExxonMobil. At the time we supplied Tosco, it was the BP brand before BP did their purchase of Amoco.
Q. So, in other words, you were a BP distributor before BP acquired Amoco?
A. Yes, we were BP through Tosco, and Amoco through Amoco.
Q. I got that straight. Is everybody clear on that?
What jurisdictions did you do business in?
A. New Jersey, Pennsylvania, Delaware, Maryland and Virginia.

Q. Was there one jurisdiction that you concentrated on more than others of those?

A. Initially it was Delaware, because that's where our office was, our base was, but we grew out from there.

Q. Did anyone else ever, aside from the transaction that you ultimately did with GPM, other than you, Mr. Sweet, and Mr. LeRoy, did anybody else have an ownership interest in GLeS?

A. No.

Q. Ultimately -- not ultimately -- in 2005, I believe you did, GLeS did a transaction with Peninsula Oil, isn't that right?

A. Yes.

Q. Prior to that, had you acquired the interests of any other distributor or oil company?

A. Yes.

Q. Which ones?

A. In October of 2003, we acquired other assets of Peninsula Oil. In December of 2000, we acquired assets of Amoco. And also in December of 2000, we acquired assets of Shellhorn & Hill.

Q. I'm sorry, Shell what?

A. Shellhorn & Hill.

Q. Okay.
Tell me the nature of the assets that you acquired from Peninsula in 2003, what was that?
A. Primo Properties acquired 14 Uncle Willie's branded locations and then leased them to GLeS.
Q. Had Peninsula operated Uncle Willie's itself?
A. Yes.
Q. Did GLeS operate those sites for any period of time?
A. No.
Q. So GLeS sold the businesses there and retained the real estate and had a lease arrangement with an operator?
A. GLeS never owned the real estate. Primo owned it.
Q. And then GLeS supplied whoever it was who became the operators of those sites?
A. Yes.
Q. How about the transaction with Amoco in 2000, what was the nature of that?
A. Amoco co-existed with us in this market. We were supplying dealers and they were supplying dealers and they made a corporate decision that they weren't going to continue to serve directly, and we purchased

their assets, along with assignment of the existing dealer leases.

Q. So the portion of the territory that had been both direct supplied and distributor supplied now became wholly distributor supplied?

A. Yes.

Q. And then you said in December of 2000 you also did a transaction with Shellhorn & Hill?

A. Yes.

Q. What was that?

A. Primo Properties purchased eight pieces of real estate and then leased them to GLeS.

Q. In connection with the 2005 transaction with Peninsula, was there any one person in particular at Peninsula that you dealt with?

A. Yes. John Willie.

Q. Was Mr. Willie the president of the company?

A. Yes.

Q. Did Peninsula continue doing business in some fashion after the 2005 transaction?

A. They continued to operate, but they were no longer in the gasoline business.

Q. They were still involved in heating oil or some other type of business like that?

A. Yeah, other businesses.

Q. Now, you mentioned earlier on that I think you also were engaged in business with MLG Realty and I think another realty company.

A. Yes.

Q. What are those?

A. They are businesses that I wholly own outside of the Primo and GLeS companies. I own commercial real estate and do property management.

Q. Just so I am clear, at this time GLeS does not supply motor fuel to anybody?

A. No.

Q. I think I saw somewhere in the documents that there was a reference to a mutual cancellation that you entered into with Sunoco at some point in time, I think in 2006 or 2007.

Do you recall that?

A. Yes.

Q. What was that?

A. After GLeS's sale and assignment of the balance of our supply agreements to GPM, we terminated our relationships with each of our suppliers.

Q. The agreement that you had with Sunoco, was that an agreement that was separate from the Tosco

agreement that had been assigned to Sunoco?

A. I'm not sure if I understand the question.

Q. When you -- and when I say you, when GLeS -- when GLeS acquired the interest of Peninsula in 2005, Peninsula at that time had a relationship with Tosco, did it not?

A. At the time I'm not sure if it was still Tosco or if it was Sunoco.

Q. It had an original agreement with Tosco that had been assigned to Sunoco; correct?

A. Yes.

Q. Related to the Mobil brand; right?

A. Yes.

Q. And you ultimately took an assignment -- you being GLeS -- took an assignment of Peninsula's interest in that agreement; right?

A. Yes.

Q. Separate from that relationship that was created through you stepping into Peninsula's shoes -- when I refer to you, I'm talking about GLeS --

A. Okay.

MR. HUTCHISON: We agree.

MR. STORM: Okay.

BY MR. STORM:

Q. Other than the relationship that GLeS stepped into through Peninsula and Sunoco stepped into through its assignment from Tosco, did GLeS have a separate relationship of some kind with Sunoco?
A. Yes.
Q. Was that pursuant to a separate Sunoco/GLeS agreement related to the Sunoco brand?
A. Yes.
Q. When was that agreement entered into, if you know?
A. I'd have to go back and pull the agreement. I don't know.
Q. Prior to the assignment from Peninsula in 2005 to GLeS, did you ever supply Sunoco branded locations?
A. Yes.
Q. How many?
A. One.
Q. Where was that?
A. In Glasgow, Delaware.
Q. And that was pursuant to that agreement that you had with Sunoco?
A. Yes.
Q. Was that a 2003 agreement, do you recall, that you had with Sunoco?

A. I'm not sure of the date. I'd have to pull the agreement.

MR. YOUNG: One point of clarification while we are at a break. You refer to the assignment between Tosco and Sunoco. I believe it was an assignment from ConocoPhillips, which was a successor to Tosco.

MR. HUTCHISON: I think we can agree that we don't have to fill in the blanks in the middle.

MR. STORM: Actually ConocoPhillips was a successor to Phillips under that agreement, which was a successor to Tosco, but we will save that for later.

BY MR. STORM:

Q. Was there any particular person at Sunoco during the time period, from the time you signed the Sunoco agreement until the time that you got out of business in 2007, out of the distribution business in 2007, were there certain people at Sunoco with whom you dealt?

A. Yes.

Q. I think I have seen the name Dorothy Love or Dolores Love?

A. Dolores Love.

Q. And Jeff Byard?

A. Yes.
Q. Anybody else at Sunoco you dealt with?
A. Karl Beckers.
Dan Moore.
And I'm not sure who else.
Q. Were those people, Miss Love, Mr. Byard, Mr. Beckers, and Mr. Moore, were those all people who were part of the distributor side of Sunoco's business?
A. Yes.
Q. Let me direct your attention to Exhibit 2 in front of you there, and ask if you can identify that exhibit for me?
A. This is the assignment of Peninsula's rights to GLeS as it related to their, Tosco/Sunoco supply agreement.
Q. I am going to ask you a few questions about this document, but I want to just go back to ask a couple of background questions about GPM for a minute, the entity that GLeS did the transaction with in 2007.
Was GPM already involved in the motor fuel business in this area?
A. Yes.
Q. How many sites did they operate, do you know, approximately?

A. I couldn't tell you. Something over 200.

Q. They did business in what general geographic area?

A. Virginia, Delaware, Maryland. I couldn't tell you other states.

Q. Were they a larger entity than GLeS at the time that they acquired the interests of GLeS?

A. Yes.

Q. Do you know approximately how many sites they operated or supplied?

A. Something over 200, but I don't know the exact number.

Q. Total, not just in this area?

A. Total.

Q. The document, Exhibit 2, I think you mentioned it's the assignment and assumption agreement related to the Tosco/ConocoPhillips/Peninsula agreement; right?

A. Yes.

Q. Was there also an assignment and assumption agreement that GLeS entered into with Peninsula as part of the Peninsula/GLeS transaction that related to sites that were not Mobil-branded locations?

A. Can you restate the question?

Q. At the time that GLeS acquired the interests

of Peninsula in these various locations in 2005, which included the two sites that are involved in this litigation, only one of the sites involved in the litigation was a Mobil-branded site; right?

A. Yes.

Q. And so, for example, the site, the Laurel Oasis location, which at the time was branded Texaco, that would not have been a location that was covered by this assignment, Exhibit 2; correct?

A. Correct.

Q. So my question is, were there other assignment documents between GLeS and Peninsula that dealt with these other locations that were outside of the Sunoco bailiwick?

A. No, I don't believe we were. We didn't take assignment of any other supply agreements.

Q. Did you take assignment of my client's agreement with Peninsula related to Laural Oasis?

A. Yes, we did.

Q. How did you do that, pursuant to what document?

A. I believe we had an agreement of sale. It was probably addressed in the agreement of sale.

Q. Was there a closing on that transaction?

A. Yes.

Q. Did that happen in a lawyer's office?

A. I'm sure that it did. I don't remember exactly where it was.

MR. STORM: That's another document I mentioned that was not in the documents that were produced, that there were no other assignment documents relating to the transaction. Certainly not an assignment document that would specifically relate to Laural Oasis.

BY MR. STORM:

Q. The document in front of you as Exhibit 2, you were aware, were you not, at the time that you signed this document on or about August 31st of 2005 that Sunoco's right to the Mobil brand, that Sunoco and ConocoPhillips in the agreement between them had limited Sunoco's right to use the Mobil brand past some period of time?

MR. YOUNG: Objection to form.

You can answer.

THE WITNESS: I know that there was an expiration date. I don't know what it was off the top of my head.

BY MR. STORM:

Q. You were the -- when I say you, GLeS/Sweet Oil -- was the assignee under Exhibit 2; right?

A. Yes.

Q. You agreed in this document with Sunoco in paragraph -- well, in this document with Sunoco and with Peninsula that the locations that were supplied Mobil brand fuel under the expiring agreement will be rebranded Sunoco promptly in accordance with a schedule to be agreed upon, do you see that in Paragraph 3?

A. Yes.

Q. And you knew at that time that the agreement between Peninsula and ConocoPhillips that had been assigned to Sunoco was set to expire on September 30th of 2005 pursuant to Paragraph 2 of this agreement?

A. Yes.

Q. Had you seen that agreement at the time that you signed this assignment document or the time that GLeS --

MR. HUTCHISON: Which?

BY MR. STORM:

Q. Had you seen the distributor agreement between Tosco, ConocoPhillips and Peninsula?

A. I don't recall.

Q. Let me direct your attention to Exhibit 8.

So my question is, in late August of 2005, had you seen and reviewed Exhibit 8?
A. I don't believe that we did.
Q. Prior to signing this document, Exhibit 2, had you seen the agreement between Peninsula and my clients relating to the Delmar Mobil location?
A. Yes.
Q. And had you reviewed that?
A. Yes.
Q. You were aware, then, at the time you signed Exhibit 2, or at the time that GLeS signed Exhibit 2, that any brand change had to be mutually agreed upon?
A. Yes.
Q. The signature on this Exhibit 2 on behalf of GLeS, is that your signature?
A. Yes, it is.
Q. If you go to Paragraph 7 of Exhibit 2, the location that's identified as the Duck-In #2 location --
A. Yes.
Q. -- was that a Mobil-branded location that you began, that Sweet Oil began supplying after it acquired the Peninsula assets?
A. Yes.

Q. Did the relationship between Sweet Oil and Duck-In continue after that?

A. Yes.

Q. And for how long?

A. Up until the assignment to GPM.

Q. Was Duck-In one of the locations that was transferred to GPM?

A. Yes.

Q. What was Duck-In branded at that time?

A. At the time of transfer, I think it was unbranded.

Q. Do you remember how that happened, that it went from the Mobil brand to unbranded?

A. Yes. Once the breach of the Mobil brand -- or once the breach occurred at the Delmar location, we no longer met the minimum criteria for Sunoco to supply under the jobber agreement, and they didn't want us to maintain that agreement with just the Duck-In location, so we mutually agreed on terminating.

Q. What supply agreement are you talking about?

A. Our distributor agreement with Sunoco had minimum volume requirements that we had to meet.

Q. But wasn't that distributor agreement as related to the Mobil brand the agreement that Sunoco

was talking about in this assignment document as ending and wouldn't be renewed on September 30th, 2005, Paragraph 2?

A. Yes, at the time that we signed this, it was contemplated that this Tosco agreement was due to expire at the end of September, and the Mobil gallons were going to be rolled into our Sunoco agreement.

Q. Who envisioned that?

A. That's the way it was explained to us by Sunoco.

Q. And Sunoco told you that's the way it's going to work; correct?

MR. YOUNG: Objection to form.

THE WITNESS: Right.

BY MR. STORM:

Q. Who at Sunoco were you dealing with on that?

A. Dolores Love and Dan Moore, I believe.

Q. Did you ever say to Sunoco, well, wait a minute, this contract that Peninsula has with the Glenns requires the Glenns to consent?

A. Yes, I actually furnished them a copy of the agreement.

Q. And what conversation did you have with Sunoco about that?

A. To the best of my recollection, I believe that they said that it was going to be a required conversion because they had purchased the rights to that brand.
Q. Who at Sunoco told you that?
A. I believe it was Dolores, but I'm not 100 percent certain.
Q. When do you think that occurred, that conversation?
A. On or about when we signed the assignment agreement.
Q. In 2005, at the time that GLeS was going to do the transaction with Peninsula, did GLeS have an office somewhere in Delaware?
A. Yes.
Q. Where was that?
A. On Kirkwood Highway in Newark.
Q. How many employees did the company have?
A. Approximately ten.
Q. And I take it there was an accounting and bookkeeping department?
A. Correct.
Q. And how many employees were in the accounting and bookkeeping department?
A. At the time, I believe it was four.

Mark Greco

Q. Did Sweet Oil do any of its own hauling?
A. No.
Q. So any hauling of product was done through outside haulers; right?
A. Common carriers, yes.
Q. Common carriers.
Can you tell me which ones?
A. I believe at the time it was exclusively Coraluzzo.
Q. Did Sweet Oil have an annual contract with Coraluzzo?
A. Yes.
Q. And when that contract came up each year, did you put the contract out to bid?
A. Yes, we did.
Q. What other freight companies would it have been put out to?
A. Numerous companies.
Q. Give me some names, if you recall.
A. Eagle, Penn Tank, Tipton, MIT. Many other companies.
Q. You were trying to, obviously, get the lowest freight rate; is that right?
A. That was one of our objectives.

Q. What were the other objectives?
A. We wanted to get the maximum amount of service that we could, 24-hour-a-day/seven-day-a-week deliveries.
One of the criteria was they had to be able to deliver through the extent of our network. Not all the carriers have the capability of delivering the entire network, so that was a requirement.
Q. Do you know who was doing Peninsula's hauling to my client's locations?
A. At the time we purchased the contracts, Peninsula had Coraluzzo and Eagle both supplying.
Q. The product that was supplied, the Mobil-branded product, was there a particular distribution terminal that that came from?
A. The primary terminal would have been Salisbury, Maryland.
Q. How about with respect to initially the Texaco product and then the CITGO product?
A. I believe primarily that was Delaware City.
Q. How about the same for any diesel fuel for those two locations?
A. Yes, either of those terminals.
Q. At any of the locations that GLeS or you or

Mr. LeRoy or Mr. Sweet operated, did any of those sites have convenience stores?

A. Yes.

Q. Did any of them have quick serve restaurants?

A. No.

Q. Did GLeS develop any locations itself?

A. When you say develop?

Q. As a ground up facility?

A. That GLeS owned, is that what you're asking?

Q. Or that one of the related, some related entity owned.

A. None that Primo or GLeS owned.

Q. How about any other, you or Mr. Sweet or Mr. LeRoy?

A. No.

Q. How about when you were affiliated with Texaco, were you affiliated with any ground-up locations?

A. Many.

Q. Were those facilities that included convenience stores?

A. Yes.

Q. How about any food service?

A. Yes. Delis and things like that.

Q. Why were sites developed with convenience stores and delis, things of that nature?

A. Providing additional offerings to the customers.

Q. To tie in with the motor fuel sales?

A. In some cases.

Q. It was generally viewed, was it not, throughout the 90's, and up to the present time, that convenience stores and food service and motor fuel are complimentary of one another?

MR. YOUNG: Objection.

MR. HUTCHISON: Objection as well.

THE WITNESS: You used the term "generally." I don't know --

BY MR. STORM:

Q. Well, most of the new facilities that you see being built today include convenience stores, do they not?

A. They include many different uses.

Q. Such as?

A. Car washes, quick lube centers, repair facilities, Dunkin' Donuts. Any number of different offerings.

Q. Why is that?

A. Well, the margins continue to shrink on everything as competition develops, so you increase the number of offerings that you have.

Q. In order to try to increase the profitability of a site?

A. Yes.

Q. You mentioned shrinking margins. Is the motor fuel business competitive?

MR. YOUNG: Objection.

THE WITNESS: Yes.

BY MR. STORM:

Q. Generally it's a business, is it not, where the margins are measured in pennies per gallon?

A. Yes.

MR. YOUNG: Objection.

BY MR. STORM:

Q. Is it a business where, based on your experience, consumers buying at retail are price sensitive to the price of gasoline?

MR. HUTCHISON: Objection.

MR. YOUNG: Objection.

THE WITNESS: To the best of my opinion, I would say yes.

BY MR. STORM:

Mark Greco

Q. How many years have you been in the business?

A. Since I was 15 years old. 30 years.

Q. A typical load of gasoline that's delivered to a site, how many gallons, if it is a full load?

A. 8900.

Q. Have credit card fees become a big issue in the industry?

MR. YOUNG: Objection.

MR. HUTCHISON: Objection.

BY MR. STORM:

Q. Let me rephrase it.

A. Yeah.

Q. When GLeS was supplying locations, there was generally credit card processing that was involved at the retail sites, was there not?

A. Correct.

Q. The retail sites took either branded proprietary oil company cards and they took Visa, Master Card, credit cards like that; right?

A. Correct.

Q. And on the non-oil company cards, there were generally fees associated with the processing of those cards; right?

A. Yes.

Mark Greco

Q. And as the price of the gasoline or motor fuel goes up, the credit card fees, for example, at $4 a gallon are greater than they were at $2 a gallon; right?

A. Correct.

Q. I know you know Mr. LeRoy; right?

A. Yes.

Q. Let me direct your attention to Exhibit 3.

Have you seen that article before?

MR. HUTCHISON: Does the article have a date?

MR. STORM: There is another page to that that appears not to have been copied. It was December 23rd, 2007, in the Sunday News Journal here in Wilmington in the business section.

BY MR. STORM:

Q. Have you seen that article?

A. Yes, I believe so.

Q. On the second page, Mr. LeRoy is quoted as saying that competitive prices are the driving force. You cannot be competitive in this market place. If you didn't stay competitive, you wouldn't have customers.

Do you see that?

A. Yes.

Q. Do you agree with that?
A. Competitive is a relative term. I would say to some extent, yes.
Q. Later on, in the middle column on the second page, he is quoted as saying, "Retailers are getting killed, they're getting squashed in the middle. One of the biggest culprits is not the oil companies, it's the credit card companies."
Do you see that?
A. Yes.
Q. Do you agree with that?
A. I don't know if I would have stated it exactly like that.
Q. But the point that's being made there is it relates to the credit card fees; right?
A. Yes.
Q. Let's go back to 2005 and the purchase of the assets from Peninsula, and I think that we have already established that those assets included the two locations that are involved in the litigation.
Were there values that were allocated to the various assets that were being acquired from Peninsula?
A. They weren't allocated by site. We bought a

package of agreements.

Q. How many agreements, do you remember?

A. I believe it was 18, but I'm not sure.

Q. Were those all supply contracts?

A. Yes.

Q. I think you talked earlier that you dealt primarily with Mr. Willie.

A. Yes.

Q. And Mr. Willie was probably the same guy that Willie's were named for?

A. It's the family name.

Q. Did you talk to him about how Peninsula had been performing under the various contracts, the method of performance? Let me give you an example. For example, on the commission site at Laurel Oasis, how did monies come into Peninsula from Laurel Oasis and how were commissions paid by Peninsula, did you talk at all about the mechanics of how it worked?

A. I don't think we got into that detail. They furnished us all the contracts and we, I guess, made our own interpretation based on what the contracts required us to do.

Q. Did you visit with my clients before the assignment took place?

A. Yes.
Q. Tell me what you recall about that meeting?
A. We had several meetings, myself and Bill Glenn, discussing the possibility of changing the brand at the Texaco truck stop. We had meetings with Terry Sullivan from CITGO Petroleum. We discussed the possibility of making them an actual distributor, a subdistributor of ours where they would be able to go out and hire their own trucks and supply not only their locations, but potentially other locations.
Q. Were those discussions before you acquired the assets from Peninsula or after you acquired the assets?
A. It was right in that same time frame. I couldn't tell you exactly when.
Q. So just so I'm clear, before you actually bought the assets from Peninsula, you didn't do a review of Peninsula's method of operation to see how Peninsula was performing under its contracts with the various operators that --
A. We actually hired their sales rep, Rod Coleman, who was Peninsula's rep and then later became our rep in an effort that we would not disturb customer service.
Q. Did he become a rep for either of my clients'

locations?
A. He continued to be the rep. He was the rep prior to and he was the rep afterwards.
Q. Was there another rep also, somebody named Adam?
A. At a later date, Adam Gray became the rep.
Q. When did he become the rep?
A. I don't know the exact date.
Q. What happened to the fellow from Peninsula?
A. He was with us for a while and then eventually left the company. I couldn't tell you exactly the time frames when everything occurred.
Q. Do you remember how long he stayed with you?
A. He was with us for a while. He changed assignments, he had various different dealers, and then eventually he left the company.
Q. At the time of the 2005 transaction with Peninsula, you knew that my clients' Delmar location was branded Mobil; right?
A. Yes.
Q. And you knew that my clients had been receiving incentive monies from Peninsula --
A. Yes.
Q. -- related to that Mobil brand; right?

A. Yes.
Q. Did you know how Peninsula had been submitting requests to Sunoco for payment with respect to that incentive money?
A. Yes. We requested copies of the incentive paperwork that was submitted.
Q. And it was based on a three-cent a gallon incentive, was it not?
A. I believe it was, yes.
Q. Who in your office was responsible for submitting that paperwork?
A. I believe the person who ultimately submitted it was John Collins.
Q. John Collins?
A. Collins.
Q. And what was his position?
A. He was marketing support.
Q. Where is Mr. Collins now, do you know?
A. He lives in Delaware, but he's not employed by GLeS any more.
Q. Do you know where in Delaware he is?
A. I believe he lives in Smyrna.
Q. You were aware, were you not, that there was a transaction in 2000 where Exxon and Mobil merged?

A. Yes.
Q. That was common knowledge in the industry, was it not?
A. Yes. It was on the news, newspaper, everything.
Q. And you also knew as a result of that that as part of the regulatory approval that the Mobil brand had to be divested in certain geographic areas?
A. Yes.
Q. And that included the Mid-Atlantic states?
A. Yes.
Q. And ultimately you were aware, were you not, that Tosco acquired rights to the Mobil brand within the Mid-Atlantic area?
A. Yes.
Q. And you knew, did you not, that Tosco had a licensing agreement that ran from 2000 to 2010?
A. Yes.
Q. There was something that Mobil had that was known as Speedpass, was there not?
A. Yes.
Q. What was that, can you explain what that is?
A. It was a payment method that the Mobil customer, at their option, had the ability to process

their credit card transactions through a receiver that they kept on their key chain.

Q. I think you testified earlier that you were an ExxonMobil distributor; right?

A. Yes.

Q. And was that a technology ultimately that Exxon also adopted following the merger?

A. Yes, some time after, but yes.

Q. And that was viewed as a convenience to the customer, was it not, to be able to wave the key in front of the dispenser rather than inserting a credit card?

MR. YOUNG: Objection.

THE WITNESS: I think that they believed that it was.

BY MR. STORM:

Q. Was there some device or mechanism that had to be installed on the dispenser in order to allow you to wave the key in front of the dispenser?

A. Yes.

Q. And there was a cost associated with that at any site that had Speedpass, was there not?

A. Yes.

Q. Do you remember what that was?

A. Off the top of my head, I don't.
Q. Was that something that Mobil and later Exxon advertised?
A. For a period of time, they did.
Q. Was that a technology that was -- I don't know if it still is -- but at that time back in 2000 to 2005, let's say, unique to ExxonMobil?
A. I know other companies were experimenting with it also in different markets, but originally it was Mobil's -- Mobil I guess was the first to come out with it.
Q. You have been involved with a lot of different brands, it sounds like, throughout your career?
A. Yes.
Q. You have been involved, obviously, in situations where a location changes the brand; right?
A. Yes.
Q. And there is an effort made at the time that a location changes the brand to promote that new brand, is there not?
A. Yes.
Q. And to try to develop a customer base or a customer following for that brand?
A. Yes.

Q. And then if the location then changes brands again, then you have to go through that process again; right?

A. Yes.

Q. So, for example, if you convert the location to the BP brand and you then try to attract all of the customers to your BP site and then you change the BP to Exxon, then you have to go through that process again, right, of trying to get the customers back, bring them to the Exxon station now as opposed to the BP station?

A. To some extent that's true, depending on a large number of factors. When we converted all of our Amoco sites to BP, the entire market converted and we didn't see any erosion in volume.

Q. That was a whole market of those sites; right?

A. Yes.

Q. During the time that you were supplying, after you acquired the Peninsula assets in 2005 until the time that Sunoco stopped supplying Sweet Oil with Mobil branded product, did Sunoco support the Mobil brand in any way? In other words, did it have any kind of marketing program for the Mobil brand?

MR. YOUNG: Objection. It is two questions, but you can answer.

THE WITNESS: I don't recall.

BY MR. STORM:

Q. You understood from the time that you acquired the Peninsula locations that it was Sunoco's intention to convert all of the Mobils to Sunocos; right?

A. Correct.

Q. And that was true not just in Delaware, but everywhere else that Sunoco had acquired the rights to the Mobil brand?

A. Yes. You are talking Mid-Atlantic area.

Q. These stations that were Mobil branded, I take it that the stations had the Mobil sign; right?

A. Yes.

Q. And it had the Mobil color scheme?

A. Yes.

Q. Which was certainly a color scheme different from, say, a Sunoco color scheme; right?

A. Yes.

Q. There was a Mobil proprietary card that went along with the Speedpass thing, wasn't there?

A. It was an ExxonMobil card.

Q. So customers that had that card could use the card either at an Exxon or at a Mobil?

A. Correct.

Mark Greco

Q. I may have asked you this, and if I did I apologize, but in addition to the Delmar location and then the Duck-In site, were there any other Mobil locations that were involved in the transaction between GLeS and Peninsula?
A. Yes. One more.
Q. And what was that?
A. Deluxe Mobil in Seaford.
Q. What happened to that site ultimately?
A. It was an extremely low volume location and was not acceptable to be converted to Sunoco, so it was converted to another brand.
Q. Still supplied by Sweet Oil?
A. GPM.
Q. GPM?
A. Yes.
Q. So, in other words, it stayed Mobil up until the very end as well?
A. Yes.
Q. In February?
A. Yes.
Q. So my clients' location wasn't the only one in February of 2007, the only Mobil that hadn't converted?
A. No. We had three Mobils at that time.

Q. And none of the three had converted?
A. No.
Q. Any of the other two, the Duck-In or the Deluxe location, had those locations made the switch to the Sunoco credit card network prior to February of 2007?
A. I believe they did. I believe their equipment was compatible and I believe they were on the other network.
Q. When you say their equipment was compatible, what do you mean?
A. There was a mechanical upgrade that was necessary at the Delmar location due to the type of equipment that they had. I don't remember the exact number, but it was a couple thousand dollars that was necessary to upgrade the Delmar site to be able to be compatible with Sunoco's system.
Q. With respect to the credit card processing, that was the issue at the Delmar location, was it not, that ultimately when my clients could no longer process credit cards, in I think June when Sunoco cut it off, in June of 2006 --
A. I think it was actually prior to that.
MR. YOUNG: Objection.

BY MR. STORM:

Q. It had to do with the incompatibility of my clients' system with the Sunoco system?

A. Correct.

Q. Do you remember the names of the people at Duck-In and Deluxe Mobil, the names of the individuals that were behind the sites and operated the sites?

A. At the Deluxe location it was Larry Bradley.

At the Duck-In location, I'm not sure off the top of my head. I'd have to pull the agreement.

Q. I think you said one of the locations was also receiving incentive money; right?

A. Duck-In was.

Q. Deluxe was not?

A. No.

Q. At Duck-In, did Sunoco ultimately waive any repayment at that location?

A. No.

Q. How much was involved there?

A. Approximately $12,000.

Q. Did all of these locations, the Duck-In, the Deluxe, and my clients' location at Delmar, did they all have the same form contract between Peninsula and

the respective operator?
A. They were similar. They weren't exactly the same.
Q. Was there another location known as Deepwater?
A. Not that I'm aware of. Not that we ever supplied.
Q. From the time that GLeS assumed the Peninsula agreements with my client in September of 2005 until February of 2007, going back to 2005, do you remember when the first time was that GLeS made any payment to my client for any of the Mobil incentive money?
A. I don't know off the top of my head.
Q. Did you ever make any payment of Mobil incentive money?
A. I believe we did.
Q. And how much and when, do you remember?
A. I couldn't tell you. Without going back and researching, I couldn't tell you.
Q. As of February 2007, was there incentive money that had been accumulated at Sweet Oil and had not been paid to my client?
A. Yes.
Q. How much was that?
A. I don't know the exact number, but I think it

was approximately $11,000.

Q. And the incentive monies would have been paid to my clients in what form? Would it have been by check or would it have been by electronic funds transfer? How would that money have been paid if it was check?

A. It would either be by check or electronic funds. I couldn't tell you.

MR. STORM: Is this a good time to take a break?

MR. HUTCHISON: Your call.

MR. STORM: Let's take a break. Five minutes.

(Recess.)

BY MR. STORM:

Q. Mr. Greco, I think you mentioned earlier that Coraluzzo did all the hauling; right?

A. For us.

Q. For you?

A. Yes.

Q. Was that true from the time that Sweet Oil took over the Peninsula locations?

A. For what period?

Q. Starting in September of '05?

A. At that point, I believe they were our only carrier.

Q. Did Sweet Oil, in connection with my client and the Delmar location, charge something called a carrier administration fee?

A. Can I go back to that last question for a second?

Q. Yes.

A. Actually, when we began to supply them in September of' 05, that's when Rita and Katrina hurricanes both hit the Gulf Coast and there were a lot of problems in getting product. And at that point, we brought in another carrier also. We had Murphy Transport was also a carrier at that time.

Q. For how long did that continue?

A. They just helped to pick up the slack when Coraluzzo was struggling with long lines at terminals and having to go distances to get product when it wasn't available.

Q. This carrier administration fee, do you remember charging a carrier administration fee to my client?

Let me direct your attention to Exhibit 4, which is one of the documents you provided

in this litigation, and ask you to identify that.
A. Okay.
Q. What is that? First of all, what is this document?
A. I believe this is an outline of the breakdown of cost to deliver product to the Doughboy's location.
Q. What is the four-tenths of a cent carrier administration fee, what is that?
A. That is the carrier's charge for Sunday deliveries, holiday deliveries. They allow a certain amount of time for demurrage, for unloading the truck. There's a whole host of fees that they charge, and what we did in an effort to accommodate our customers, many of the customers said they didn't like having to pay a specific Sunday fee, or whatever it was, so we took the charge that the carrier charged us over the course of a large period of time, divided by the total number of gallons over a large period of time, and spread out that cost so that it was equally bourne by all of the customers and it was a much more fair practice so that they didn't have to manage their inventories such that they didn't order on a holiday or on a Sunday. They could order seven days a week.
Q. And that was a carrier administration fee,

then, that was an amount that was retained by Sweet Oil; right?

A. And paid to the carrier, yes.

Q. Well, it was paid to the carrier, some part of it was paid to the carrier if there were Sunday deliveries at some location?

A. Yes. And a portion of that fee also was for managing inventories at locations where we did that. Whether the carrier themselves managed the inventory or whether we had an in-house dispatcher manage the inventory.

Q. Was that carrier administration fee something that Peninsula had charged my client over and above the actual freight cost?

A. That I don't know.

Q. Do you know whether my client ever ordered product on a Sunday?

A. I would assume that they did, because with the volume that they did, they got deliveries almost every day.

Q. And do you know whether my clients' contract specified anything about an additional charge for Sunday deliveries?

A. I don't believe that it qualified freight.

Q. The carrier, and whatever contract you had with the carriers, whether it was Coraluzzo or this other Murphy that you brought in for a temporary period, there was nothing in the agreement between Sweet Oil and the carrier about a four-cent carrier administration fee, isn't that right? Or four-tenths of a cent carrier administration fee?

A. They don't break it out that way. They itemize all their expenses.

Q. So Sweet Oil determined as part of its method of doing business, Sweet Oil, after the assignment from Peninsula, determined that this is how we are going to deal with this issue of these additional charges that are incurred for Sunday deliveries, for example?

A. That's incorrect. That was our practice from the beginning of time.

Q. It wasn't something new?

A. No, it wasn't new to them.

Q. So, in other words, when the Peninsula Oil sites came on board with Sweet, that was something that got imposed on those buyers automatically because it was part of the way Sweet Oil did business?

MR. HUTCHISON: Objection.

THE WITNESS: It was part of our cost of

freight, so it was passed onto the customer.

BY MR. STORM:

Q. But it wasn't an actual pass-through of freight; it was a figure that you determined was going to be added on that Sweet Oil was going to charge its customers as Sweet Oil's way of dealing with these additional charges that the carriers would charge you for certain types of deliveries?

A. There's no requirement in the contract that says it has to be a direct pass-through.

Q. You are talking about in my client's contract?

A. Or in any of our supply contracts.

Q. But you knew, did you not, that that was not the way that Peninsula Oil had handled my client's freight charges?

A. I don't know that.

Q. Did you ask?

A. They used a different carrier, and we had bid the carrier that they used and they were uncompetitive, so we didn't hire them.

Q. Getting back to Exhibit 4 for a minute, just to make sure I understand the document, the top part of the document where it says Doughboy's Mobil price, tell me what that price reflects? Is that the laid-in price

to Doughboys' Mobil including freight, or what is that?
A. Without having additional back-up documentation, I'd be speculating.
Q. Actually, if you look at the bottom half, it looks like those numbers match the numbers at the top. And the bottom part tells you how you got there.
A. Okay, yes, that's correct.
Q. What's the 15 percent Department of Energy fuel surcharge, what's that?
A. All the common carriers charge a fuel surcharge as it's determined by the Department of Energy. Especially -- I believe it was imposed right about the time that these contracts were assumed because of the vast fluctuations in product cost due to the hurricanes and other conditions.
Q. Take me through the pages. It looks like there is a page for each grade of product, right, regular and then premium?
A. And then diesel.
Q. Diesel; right?
A. Yes.
Q. Then there is the same for the Laurel Oasis CITGO, same type of analysis; right?
A. Yes.

Q. So you were adding that four-tenths of a cent to every delivery at both locations, right, regardless of the type product it was?
A. At every location that we supplied.
Q. Let's look at Exhibit 5.
Do you recognize that document?
A. Yes.
Q. That's the contract between Peninsula and Chesapeake Products & Services; right?
A. Yes.
Q. That was assigned to Sweet Oil --
A. GLeS.
Q. GLeS, when you acquired the assets of Peninsula; right?
A. Yes.
Q. If you look at Paragraph 3, which is the gasoline pricing, that describes the pricing formula that was to apply to this contract; correct?
A. Yeah.
Q. If you read the description in that paragraph regarding the common carrier freight rate, it says in the fifth line down, "plus the common carrier freight rate," do you see that?
A. Yes.

Q. The common carrier freight rate did not include the four-tenths of a cent, did it?

A. No. That's addressed later in the sentence.

Q. And how is it addressed in the rest of the sentence?

A. It says, "Including any fuel or other surcharges charged by the carrier."

Q. Right. I think we established, did we not, that the four-tenths of a cent was not something that was charged to you, it was something that you, Sweet Oil, GLeS, determined as a way of spreading costs among all your customers?

MR. HUTCHISON: Objection.

THE WITNESS: I disagree. It was a charge that we paid and our method of collecting was the four-tenths of a cent.

BY MR. STORM:

Q. And is it your testimony that that four-tenths of a cent would match the amounts charged to you by the carriers? In other words, would I see a delivery for a load that was delivered to my clients' Delmar location, would I see an invoice from Coraluzzo that had this four-tenths of a cent on it for every delivery?

A. No, it wasn't billed that way.

Q. How was it billed by the carrier?

A. As I explained earlier, they itemize all their charges and there was different charges on different days, depending on the length of time it took for a delivery. I believe the common carrier term is demurrage. They allow a certain amount of time for the truck to unload and if there's any delays they charged for the additional time. That's a surcharge.

If they deliver on a Sunday, there was a surcharge. If they deliver on a holiday, there's a surcharge.

Q. The four-tenths of a cent did not represent an actual charge that the carrier incurred to deliver fuel to my clients' location; right?

A. You are asking the same question over and over. I'm answering the same question. They don't bill it as four-tenths of a cent, but they do bill those fees.

Q. Let me ask you this: In terms of these contracts that you had with Coraluzzo, those were written contracts?

A. Actually, they weren't.

Q. What were they?

A. We put out our business for bid every year and

we evaluated all of the bids and we assigned, I guess based on a verbal agreement we assigned the supply for that year.

Q. How did you put it out to bid?

A. We sent out written notices to all common carrier companies and we gave them a list of locations that they would be delivering to and pick-up terminals that they would be getting the product from. And we asked them to provide us with rates and fee schedules.

Q. You would have those for every year, then? For example, there would have been one for 2005 and 2006?

A. Yes, I'm sure there was. I'm sure there was, yes.

Q. The actual freight charge that comes from the carrier with respect to the delivery of a particular load, does that show up on the bill of lading, or where does that show up?

A. No, it wouldn't show up on a bill of lading. It would probably show up on a later invoice that they probably would have mailed to us.

Q. And would there be an invoice for each delivery?

A. I believe so. I'm not 100 percent positive.

I believe that's how it was. I'd have to pull the documentation to find out.

Q. I'm just trying to understand what documentation there would be if there's not an invoice per load, what documentation would show the actual charge that the carrier was imposing for a particular delivery?

A. I believe when they provided us the invoice, they billed us -- and I don't remember if it was weekly or biweekly, but we got a statement of all deliveries that they had made, mileage and so on and so on. It was a cumulative invoice.

Q. Do you still have those?

A. I'm not sure if we do or not. At the time we sold the company and assumed all the contracts to GPM, we also sold them our office building and we boxed up and moved everything to storage, and some things made it to storage and some things didn't.

We actually just concluded audits with each of the states that we did business in. As part of closing out all of our licenses, the states required final audits to verify the gallons and the taxes and all those things, and everything. Now that that's all complete, some of those documents weren't kept.

Q. Just so I am clear, and I think I'm clear on this, on whatever invoice Coraluzzo sent to you for a delivery to Delmar Mobil, there would not be an itemization of a .004 for carrier administration fee?

A. No, they wouldn't have called it that.

Q. In Paragraph 8, the last sentence of Paragraph 8, that's the sentence that says that if the Mobil brand becomes unavailable, the company and the dealer shall mutually agree on what brand the dealer will resell; right?

A. Yes.

Q. You were aware of that provision in this contract --

A. Yes.

Q. -- at the time that you were assigning the assignment document with Sunoco in late August of 2005; right?

A. Yes.

MR. HUTCHISON: Objection.

BY MR. STORM:

Q. You have maybe had a little bit of time to think about this. Do you recall now whether any payments were made on the Mobil incentive monies to my clients' Delmar location?

A. To the best of my recollection, I believe we made one payment to them. We received a second payment from Sunoco, which right about the time that we received it, Sunoco notified us that the location was in breach because they were not accepting Mobil cards at the Mobil site. And at that point, we escrowed the money because Sunoco, under the agreement, had the ability to request repayment.

Q. You've reviewed this agreement, Exhibit 5; right?

A. Yes.

Q. Can you show me in that agreement anywhere that obligated my client to accept Mobil credit cards?

A. (Pause.)

I don't see where it specifically says that.

Q. Let me ask you about Exhibit 6. Have you seen that before?

A. Yes.

Q. And what is that?

A. This is a request by Peninsula for incentive payments.

Q. This is actually the agreement, is it not, between Tosco and Peninsula related to the incentive

payments?

A. Yes, I believe it is.

Q. This was under the, quote, level super site incentive, if you look in the --

A. Yes.

Q. And that was the three-cent per gallon for 48 months?

A. Yes.

Q. And then Level 1 below that says that it has pay at the pump incentive and Speedpass incentive; right?

A. Yes.

Q. When it is talking about super site, do you know what that means?

A. Generally it's any gas station that has greater than four MPD's and meets a minimum criteria for the size of the store.

Q. The Delmar location, what physically was at the Delmar location?

A. They had six gasoline dispensers under a canopy on the side of the building. They had diesel on the back of the building. They had a convenience store that housed two quick serve restaurants and sold beer and wine and other convenience products.

Q. Was this document, this agreement, part of the Peninsula agreement that was assigned to GLeS when it took over the Peninsula locations?
A. I believe it was.
Q. My client was not a signatory on this document, was it?
A. No.
Q. This agreement is between the distributor and Tosco; right?
A. Yes, between Peninsula and Tosco.
Q. You weren't involved at the time certainly when my clients entered into their contract with Peninsula in 2002?
A. No.
Q. Do you know, did anybody ever tell you from Peninsula or from Sunoco whether my clients had even seen this Exhibit 5 at the time that they signed their contract with Peninsula?
A. To the best of my recollection, I remember having a conversation with Dan Moore, who is now a Sunoco employee, but was previously a Tosco/ConocoPhillips employee. And he was involved in the negotiation of the branding of the location with the Glenns, and I believe -- I don't remember exactly

the conversation, but I remember him telling me that he was part of the negotiation of the incentives with them.

Q. So he was involved in some way?

A. Yes.

Q. Let's look at Exhibit 7.

Have you seen that document before?

A. I don't believe this was furnished to us with the contract. This is merely a letter of intent, not a binding contract.

Q. This came from your file. Was this something that was provided to you by Peninsula?

A. It's possible it was provided by Peninsula or it's possible it was provided by the Glenns.

Q. Do you see the fifth paragraph down where it says, "Peninsula will allow Glenns to buy down the Laurel contract," do you know what that was referring to?

A. I have no idea.

Q. Do you see the sentence in the second paragraph, the last sentence in the second paragraph that says, "Glenns will be responsible for all reimbursement of incentive if they fail to meet the terms of supply agreement?"

Mark Greco

A. Yes, I see it.

Q. Is it your position that the Glenns failed in some way to meet the terms of the supply agreement?

A. Yes. They breached the agreement.

Q. How did they breach the agreement?

A. They stopped accepting Mobil credit cards and they stopped purchasing fuel from us.

Q. They stopped purchasing fuel from you after you sent them a letter saying that you weren't going to supply them with Mobil product any more; right?

A. Under the terms of the supply agreement, it provided for a replacement brand to be mutually accepted, and we offered them just about every brand in the marketplace, including BP, Coastal, Sunoco, CITGO, Mystic. We actually offered them some brands that GPM supplied, including Valero. Every possible brand alternative, including no brand, and they didn't negotiate in good faith in an effort to try and replace the brand.

Q. Hadn't you already committed to Sunoco that you were going to change the brand to Sunoco?

A. At the time we did the initial assignment in September, it was our intention to do that because it was put to us by Sunoco that that was going to be a

requirement.

Later they backed off that position and said that they would allow us to repay the money and release us, which would give us the opportunity to rebrand the Glenns to another brand. And we offered them every imaginable brand that we could obtain, and they didn't accept any of them.

Q. Had you ever paid the Glenns all of the Mobil incentive money that they were due under that contract?

A. No. It was in escrow because Sunoco had notified us that they were in breach.

Q. Sunoco notified you that the Glenns were in breach of their contract with you, is that right, is that what you are saying?

A. They were in breach of the Mobil brand franchise by not accepting Mobil cards from Mobil customers.

Q. Did you say to Sunoco, wait a minute, I don't think their contract says anywhere that they are required to accept those cards?

MR. YOUNG: Objection.

THE WITNESS: It's implied as part of branding a station, whether it be their locations or any other locations in the 30 years I have been in this

business, that if you are branded with any oil company franchise, that you have to comply with their standards of appearance and their payment requirements.

The customer expects when they go to a Mobil site and has a Mobil credit card in their wallet that it's going to be accepted there.

BY MR. STORM:

Q. Go back to Exhibit 5 a minute, Paragraph 10.

A. Exhibit, I'm sorry, Exhibit 4?

Q. Yes. Excuse me, the agreement between Peninsula and Chesapeake Products & Service. Exhibit 5. I'm sorry.

A. Okay.

Q. Paragraph 10 says, "The dealer agrees to pay all equipment and communication costs associated with the acceptance of credit cards whether or not processed through the company."

Do you see that?

A. Yes.

Q. Meaning the company is defined as Peninsula, right, on the first page?

A. Yes.

Q. When did you offer the Glenns, at this location, a brand other than the Sunoco brand?

A. You want a specific date?

Q. Tell me about when you think you offered that.

A. Many times between September and when it was finally, I guess, when it stopped being Mobil in February.

Q. September of 2006?

A. No. When we took assignment of the contracts, we knew that the Mobil agreement was -- even at the time that this agreement was signed between the Glenns and Peninsula, it was contemplated that the Mobil brand wouldn't exist. Tosco's right to have Mobil only went until 2010 and this agreement goes until 2012. So they knew at the time they signed this agreement that they would not be Mobil for the duration of the agreement.

Q. My question to you is, I'm trying to learn when it was that you had conversations with the Glenns about some brand other than Sunoco?

A. I think initially we went to them with Sunoco and I went back to Sunoco and said that they were considering their options, they weren't sure what they wanted to do. And actually Sunoco came back with an additional incentive over and above the incentive that they were currently receiving -- and I don't remember the exact specifics, but we have it -- that they would

offer them an additional incentive to become Sunoco.

Q. Did you personally have conversations with them about this?

A. Yes.

Q. And with Bill, Charlie or both?

A. I believe with Bill.

Q. And did you tell them that if they didn't become Sunoco they'd have to repay the $112,000?

A. Yes.

Q. So their choice is to become Sunoco, as you agreed with Sunoco in August of 2005 they would, or if they were going to accept any other brand that you had to offer, they had to repay $112,000?

A. Excuse me for a second. Let me restate that.

We agreed as one of the many offers that we made them to go to other brands that we would actually absorb that cost at our expense only as part of rebranding to another brand.

Q. Did you put that in writing?

A. I believe we did, yes.

Q. By the time that you were having these conversations, it would have been some time after September of 2006; right?

A. I don't know the exact time frame.

Q. You had already committed to sell all your assets to yet another party; right?
A. I don't know the exact timing.
Q. Certainly by August of 2006, you knew that GLeS was getting out of the motor fuel distribution business if the agreement with GPM went through?
A. If it went through, yes.
Q. And that any agreement that would envision some long-term relationship wasn't going to be with GLeS performing; it was going to be with GPM performing?
A. Yes. That the president of GPM actually met with the Glenns personally.
Q. Do you know how long the Glenns had been in a relationship with Peninsula?
A. I believe it dated back to 1990.
Q. Let's look at Exhibit 9.
Tell me what that is.
A. That's a request for incentive payments for two of the Mobil branded locations supplied by Sunoco.
Q. So in February of '06, you had been requesting the incentive for the fourth quarter of '05; right?
A. Yes.
Q. And then according to this document, the

Delmar location was entitled to 7719.08; right?
A. Yes.
Q. And was that ever paid to the Glenns, do you know?
A. I don't know.
Q. How about Exhibit 10, the same document for the first quarter of '06?
A. Yes.
Q. Do you know whether that money was ever paid to the Glenns, the 5,539.76?
A. I don't know.
Q. Now, by this time, it looks like that other location is no longer included, by the time we get to Exhibit 10. Duck-In, had their contract expired by that time?
A. No, their contract didn't expire, but they were no longer eligible for additional incentive monies. They were just in the amortizing phase of their contract.
Q. What do you mean, the amortizing phase?
A. Typically supply agreements go for durations of approximately ten years and incentives are paid over the first two years or three years or four years of that term.

Q. So at least they were through the period where incentives were being paid?
A. Correct.
Q. On both Exhibit 9 and Exhibit 10, it shows the rate as two cents a gallon, and the program as being the clip program.
Do you see that?
A. Yeah. That's Sunoco's acronym for their incentive. I don't know exactly what that stands for.
Q. That's a Sunoco program, that wasn't a Tosco program that applied to the Glenns' location?
A. It's Sunoco's terminology for how they pay incentive.
Q. The rate of two cents is wrong, right, it's supposed to be three cents?
A. Yes, I believe so.
Q. And that's true on both Exhibit 9 and Exhibit 10, it looks like?
A. Yes.
Q. Let me ask you some questions about Exhibit 11.
Have you seen this indemnity mortgage document before?
A. Yes.

Q. Now I am going to ask you about another document that's all the way back at, I think 73.

A. Okay.

MR. HUTCHISON: I am sorry, what?

MR. STORM: 73.

BY MR. STORM:

Q. My question is this: The indemnity mortgage between Delmar Real Estate Holdings and Peninsula Oil Company related to the supply agreement, did it not, between Peninsula and my clients at Delmar, is that your understanding of what this related to?

A. Say that one more time?

Q. What was your understanding of what this indemnity mortgage was given to secure?

A. It was collateral securing the performance of their requirements under the agreements.

Q. The performance under the agreements that we are talking about was the performance by my client at the Delmar location.

Is that your understanding?

MR. HUTCHISON: Objection.

BY MR. STORM:

Q. Let's go through the recitals. The first recital says, Whereas, Chesapeake Product & Services,

Inc., and BCG, Inc. -- and I am skipping some of the language -- entered into a dealer agreement with mortgagee dated October 3rd, 2002. That's the location for the Delmar location, isn't it?

A. Yes.

Q. That's the agreement for the Delmar location?

A. Yes.

Q. That agreement for the Delmar location was assigned to GLeS?

A. Yes.

Q. Right?

A. Yes.

Q. Now, if we go back to 73, there's an assignment, there appears to be an assignment of this mortgage from Peninsula to Primo Properties.

A. Yes, it is.

Q. Why was that assigned to Primo?

A. I don't know.

Q. And Primo didn't enter into any agreement with -- in other words, Primo wasn't going to be performing any of the obligations of Peninsula under that 2002 supply agreement; right?

A. No. I think they just did this in error.

Q. Do you see the second recital, Whereas,

pursuant to the purchase agreement pursuant to right of first offer agreement, do you see that?

A. Yes.

Q. What was the right of first offer agreement?

A. At the time we made our first purchase from Peninsula back in 2003, they granted us a first right of refusal against if they decided to sell this dealer business at a later date. And because Primo was the purchaser of the Uncle Willie's real estate, Primo held that right and then I guess through assignment allowed GLeS to be the purchaser.

Q. Your only explanation for Primo on Exhibit 73 was it was probably an error?

A. Yes, it had to be a typo or something.

Q. Exhibit 12 is another document I want to ask you about that was produced by you in this litigation, and I'd like to ask if you recognize that exhibit?

A. Yes.

Q. What is that?

A. That's a copy of a market report provided to us by Sunoco made out by the Lundberg Group, which does competitive pricing analysis.

Q. This exhibit includes both the Delaware and the Maryland market share; right?

Mark Greco

A. Yes.
Q. Are you familiar with Lundberg?
A. Yes.
Q. And what is Lundberg?
A. It's an independent service that monitors competitive pricing.
Q. And it is recognized in the industry as providing this type of information; right?
A. Yes.
Q. If you look at the page, the second page of that exhibit, for the period December '05, the ExxonMobil share of the Maryland market appears to be 46.72; is that right?
A. Yes.
Q. And Sunoco is 17.30?
A. Yes.
Is that relevant?
Q. I am just trying to understand. This is showing market share within the state; right?
A. Yes. But the ExxonMobil brand that's referenced on here is supplied by Exxon of Exxon branded locations. It's not Mobil branded locations.
Q. Or Exxon distributor locations; right?
A. Yes.

Q. And I think you indicated earlier that those same customers could use the Speedpass at Exxon or Mobil locations; right?

A. Yes.

Q. Let me ask you about Exhibit 13.

What is that?

A. This is our outside CPA evaluated some spreadsheets that we prepared internally documenting volume by grade and month sold to each of the two locations that we're talking about.

Q. Tell me exactly what the accountant did versus what you did internally?

A. He went through our, we call it our load deliveries system, which we record every gallon that we deliver to every location from every terminal in every state by every brand, and he verified that all the gallons that are in this spreadsheet are the exact gallons that were delivered to these sites.

Let's see what else is in here.

Q. And who prepared that data that was provided to Mr. Sanderson?

A. All of the gallonage information is recorded daily as it occurs, and I just printed the sheet out of the system.

Q. And in terms of him verifying that, what did he do?

A. Well, as I explained earlier, as part of closing out our licenses and as part of relinquishing our licenses to each of the states we did business, each of the states came in and did final closing out audits of our license and verified all our gallons. And the way they did that was they looked at our records for what we showed that we picked up from each of our suppliers, and then they went back to our suppliers and verified it was the same number.

They went to our common carrier and verified that the number of gallons picked up at the terminal were put in the truck and dropped out of the truck at each location. And then they verified with each location that the same exact number of gallons all tied out. And he verified that all of our numbers were exactly the same numbers.

Q. In terms of gallons delivered to these two locations; right?

A. Yes.

Q. And then he says that I compared the delivery information and average margins in the report with the accounting records.

Tell me what information was provided to him with respect to average margins?

A. Well, he came to the office and he went into our accounting system and he verified that from the first day we did business with them to the last day that we did business with them. Based on our costs and our selling prices, he established and verified that the average margin over the entire duration of time agreed with what's on the sheet.

Q. What information was he relying on? He was relying on information that was in your computer system?

A. Within our accounting system, yes.

Q. Is that information reflected -- and we can mark this exhibit as 75 -- the documents that were provided to me this morning, that Mr. Hutchison had e-mailed last night that I really wasn't able to print. Let's go ahead and do that.

MR. HUTCHISON: Are you attaching originals to this transcript?

MR. STORM: That wasn't going to be my intention to do that. Because everybody's going to have a copy, so I don't see any reason to.

MR. HUTCHISON: Chris, do you have a copy

of this?

MR. YOUNG: Electronically.

MR. STORM: This will be 75.

(Exhibit 75 was marked for identification.)

BY MR. STORM:

Q. Mr. Greco, can you just tell me what Exhibit 75 is and whether 75 was a document that was used and/or related to the calculations that are reflected in Exhibit 13?

A. The data that's within 75 is data that was exported from our accounting system to Excel for the purposes of printing all the detail at your request.

He didn't print this report, but he actually looked at it electronically within the accounting system, but it's the same information.

Q. Now, where on this report -- and I'm just skimming through it quickly and I'll look at it a little more carefully on another break -- but can you show me on this report, is there margin information that is shown on this report, meaning Exhibit 75?

A. When you say margin information?

Q. Well, in other words, Mr. Sanderson talks about average margins, and you said he went into your

system and he got the average margins, and so is that part of what's in Exhibit 75?

A. I don't know that it actually calculates it down to a cents per gallon in this data.

Q. In 75?

A. This is a report that we generated at your request. This isn't what he used for his report.

He had access to this and additional information within our accounting system.

Q. So tell me what he used to calculate this average margin?

A. Let me take a look in here real quick.

I don't know that I could say specifically what he did to validate his numbers. I can tell you what I did to get my numbers. I mean he spent hours and hours going through the accounting system to establish his verification.

Q. Did you provide him with what you thought the average margin was?

A. I provided him with this attached spreadsheet in No. 13.

Q. You did provide him, then, with the page that's the last page of this exhibit?

A. Yes.

Q. That at the top says Sweet Oil Estimate of Damages?

A. Yes.

Q. That was a document that Mark Greco prepared?

A. Yes.

Q. And all Sanderson did was review that and say, "Yep, it looks accurate"?

MR. HUTCHISON: Objection.

THE WITNESS: I don't know what his procedure was to establish it, but I know he spent quite a long time going through our system before he came up with that conclusion.

BY MR. STORM:

Q. But this page, this last page of Exhibit 13 -- and I'm just trying to understand who prepared this page. If I understand your testimony, it is Mark Greco prepared this?

A. Yes.

Q. And then Sanderson reviewed it and determined that it was accurate?

A. Yes.

Q. So tell me this process of determining the average margin, what you look at to get that?

A. We look at what our costs were and what our

revenue was, and that produces a net income divided by the gallons that were sold and that produces a cents per gallon value.

Would it be easier to go through the sheet with you?

Q. Sure.

A. Okay.

Beginning at the top, it shows total purchases. That ties into all the attached spreadsheets by gallon by month by product.

Q. I understand that.

A. That's where that column comes from.

Q. Right.

A. Months purchased began on September 1st of '05, and that's the duration of time that they bought product from us, based, again, on the attached volume history.

Took the total gallons divided by the total number of months that they bought and came up with an average for that duration of time. That's the third column.

Months due but not honored, that's the remaining number of months on the contract after they stopped purchasing products from us.

And underneath is the termination date of when the contract was due to expire had it run its full course.

In the middle of the page --

Q. Let me stop you a minute. If it had run its full course as of some time in 2007 -- what was the date of your closing with GPM?

A. March of 2007.

Q. So as of March of 2007, GLeS wouldn't have been performing under this contract; right?

A. GLeS still owns these contracts to this day, and if we needed to supply, we would make arrangements for supply.

Q. Do you have a supply agreement right now?

A. No. We could subcontract.

Q. But as of March of 2007, you didn't have a Mobil contract; right?

A. No.

Q. You didn't have a Sunoco contract? You mutually terminated with Sunoco; right?

A. Not in March. Some time thereafter.

Q. But you entered into a mutual cancellation of the Sunoco agreement; right?

A. At some point later, yes.

Q. Did you mutually cancel the CITGO agreement?
A. At some point later, yes.
Q. When later?
A. Some time in the summer of '07.
Q. And after you did that, are there various licenses in the State of Delaware that you need to haul motor fuel or to supply motor fuel?
A. Yes.
Q. And are those licenses currently in effect?
A. No.
Q. And because you were no longer in that business; right?
A. Yes.
Q. Take me through the rest of the document.
A. Okay. In the center of the page, average margin over the term honored, I took the amount of gallons that they purchased, actual purchases from us. I took the net income, which is the difference between our cost of goods and the revenue that we derived from selling the product to them, and came up with a total revenue. I divided that by total gallons and came up with an average margin per gallon over that duration.
Then the next column is average margin times the months that they did not honor. Again, going

to the top of the page far right column. The number of months times average gallons times the average margin is the amount of revenue that had they not breached the contract and fulfilled their agreement, this is the amount of revenue that would have been derived from that agreement.

Q. Let me stop you, as to Laurel Oasis CITGO, it says that's 98,451.73; right?

A. No, that's not correct.

MR. HUTCHISON: Objection.

BY MR. STORM:

Q. I'm sorry.

A. It's $81,378.19.

Q. I see. That 98 included something else, right, okay.

A. What that includes is, the next column is equipment recapture agreement as part of their agreement, the equipment that was, the investment that was made for all the pumps and canopies and other equipment was amortizing, and every month that they honored the contract it was reduced by $948.53.

When they ceased honoring the agreement, that amortization stopped. So $948.53 times the remaining number of months equals 17,073.54, which is

still owed on that equipment.

Q. Let me ask you this, and maybe I misunderstood you, but I think that I asked you when we were talking about the transaction that GLeS did with Peninsula --

A. Yes.

Q. -- back in 2005, and you acquired these rights that Peninsula had to supply these various locations, I think you indicated that the locations weren't broken out by site, that values weren't allocated to each of the supply locations?

A. In our agreement with Peninsula, it was not. Internally we did, based on gallons. Many of the 18 locations that we purchased were extremely low volume locations, and they came along as part of the package. But a lot of the weight of the reason that we purchased it was based on the large number of gallons.

Q. But the contract that you had with Peninsula did not specify a value for this Laurel Oasis agreement, for example?

A. No, it wasn't broken down in the agreement.

Q. And the monies that were paid by Peninsula, for example, to install equipment at this Laurel Oasis location --

A. Uh-huh.

Q. -- that was money that was paid by Peninsula; correct?

A. Yes.

Q. The margin, the .02925 margin for the Laurel Oasis location, the margin at this site, since it was -- Laurel Oasis was a commission arrangement on gasoline, was it not?

A. Only on gasoline, yes.

Q. And on diesel, it was a fixed price in the contract, right, for the diesel fuel?

A. Yes.

Q. In terms of the margin calculation on gasoline for Laurel Oasis, the margin would have been the difference between the rack price and the retail price; correct?

A. Less all expenses.

Q. Less expenses?

A. Yes.

Q. And this .02925 number, that includes, I assume, both gasoline and diesel?

A. Yes, it's everything.

Q. And in order to obtain that number, what is the backup that Mark Greco has for that number?

A. I went into our accounting system and I

generated a query report from September 1st of '05 through the last day of purchase, the last purchase that they made, and generated a revenue number and a cost of goods number and a net income number, which I then divided by the gallons.

Q. And the net income number, is that broken out per location or is it broken out generally within the organization?

A. No. Specific to the site.

Q. It is, okay.

A. Yes.

Q. So those are reports that you could produce; right?

A. Yes.

MR. STORM: I think that's something else we would add to our list.

MR. HUTCHISON: I think you have it.

MR. STORM: As back-up.

MR. HUTCHISON: I think Exhibit 75 has it.

BY MR. STORM:

Q. Is that information in Exhibit 75?

A. I don't know that the calculation for the pennies per gallon is in there, but the data is in

here.

Q. Show me the data for the margins.

A. I don't have a calculator in front of me, but if you go to -- I just happened to flip to one page -- it is actually -- there's two stapled packages. Go back to the third, which is actually just an individual page. Handwritten on it it says "Delmar summary."

Q. Okay.

A. That is fuel sales, which represents invoices that were sent to the Glenns to be paid for fuel.

Under that is our cost of goods, which includes transportation, taxes.

The one percent discount is something that's excluded in their contract, so we back that back out. And the cost of the fuel. And that produces a net, it says gross profit on the bottom line there, but that number needs to be adjusted for the one percent discount because that's something that the Glenns weren't -- that's not subject to their agreement. That's something that we enjoyed as part of the contract for payment terms.

So the difference is -- I don't have a calculator sitting here -- but approximately $30,000. Take that number, divide it by the total number of

gallons over the duration --

Q. Hold on. Let me stop you a second.

When the one percent discount was subtracted from the cost of goods sold, right, initially, you're saying you added it back in?

A. Yes, we would have -- that's revenue that GLeS would have received. Had we continued to supply the location, GLeS would have continued to receive incentives for prompt payment from our supplier.

Q. It just reduces your cost, doesn't it, ultimately, because you are paying less because you are getting a one percent discount off of what you are paying?

A. You could apply it that way.

Q. I am just trying to right now follow your methodology.

We have the total fuel sales, which are the 3,998,347; right?

A. Yes.

Q. And that's the total gross number of the sales to the Laurel Oasis location?

A. No. This is to the Delmar location.

Q. I am sorry, we are on Delmar now.

A. Yes.

Q. Okay.
From that we subtract what you determined to be the cost of goods sold?
A. Yes.
Q. What backup do you have to support these numbers? In other words, the transportation of 42,475, where does that number come from other than you hitting a button and saying the computer spits it out?
A. It comes from all the invoices, all the payments that were made to the carrier as it relates to this location. The accounting system records, every time we write a check, it records it.
Q. So that the four-tenths of a cent that is being collected for carrier administration fee, which is actually a number that, as a number, doesn't get paid to the carrier, right, because --
MR. HUTCHISON: Objection.
THE WITNESS: I'm not sure exactly what you're saying.
BY MR. STORM:
Q. You don't pay the carrier an amount equal to .004 per gallon?
A. An amount equal to or the exact amount?
Q. That exact amount.

A. If you're asking if there's a line item that says .004, I don't believe there is. They itemize all their fees.

Q. Okay.

My question is, is that 42,475, then, wherever you got that number from, if it is actual invoices from the carriers, it doesn't match up with a .004 per gallon, there is not a charge on the invoice from the carrier for that amount?

A. I don't know that.

Q. The taxes are what? The 1602.11, what taxes?

A. That would have been taxes that were not collected at the rack. Some states and some products collect at the rack. Our suppliers collect and others -- and I don't know exactly what this 1600 was -- but at some point product was picked up at a terminal without the tax being collected and we had to remit it to the state.

Q. Then the one percent discount, you've applied one percent to what, to the three million 998 number, right, to get to 38,000?

A. This is an actual number that was received for actual invoices for these locations. It's not a one percent times something. I didn't do a calculation to

come up with this number. This is the exact number.

Q. How is that received for those locations?

A. Every oil company treats it different. In most cases when we receive our EFT debit, they generate invoices for us for the product, and then on our EFT settlement they make an adjustment for payment terms.

Q. It is reduced, then, by the one percent discount?

A. Yes. The amount that they debit our account for.

Q. The amount that you pay the supplier is reduced by the one percent?

A. Yes.

Q. And then the bottom number for fuel is what?

A. That's the actual cost of fuel that we pay the supplier.

Q. Now, if I said, Mr. Greco, furnish me with the backup for these numbers that you have just talked about, what would you provide me?

A. All the pages that are attached here (indicating).

Q. But there's no backup, for example, on transportation charges.

A. No, I don't believe there is. I'd have to go

back and see if we still have copies of carrier invoices.

Q. That's Delmar. How about for Laurel?

A. That's also in here. That is further back in the package. If you're going from the back of the package, there's two stapled packages and then there's one loose page also for that. And it's labeled Oasis summary.

Q. How did you do that one?

A. The same exact methodology. The fuel sales is diesel invoices that were sent to the Glenns for payment and fuel invoices that we generated for the gas. Transportation, taxes, all of that is exactly the same. And net of the cost of the fuel transportation, et cetera, produced $30,320.07 in gross profit for that location.

Q. For what period?

A. For the entire duration of time that we did business with them.

Q. And then you divided that per month?

A. I divided it by the total number of gallons.

Q. By the gallons?

A. Yes. To come up with a cents per gallon.

Q. And then multiplied that times the months

remaining?

A. Yes.

Q. Then that gave you the 81,378.19?

A. Yes.

Q. And that gave you the margin of .02925; right?

A. Yes.

Q. The average margin on the Mobil location of .01667, do you see that?

A. Yes.

Q. The contract specified that your margin was to be one cent, did it not?

A. Yes.

Q. So what's the other 667 for?

A. Again, payment terms, prompt pay discount was excluded from that contract, that the Glenns weren't entitled to that, we were, and that represents the difference.

Q. And is part of that also a factor, that .004 amount that you have received as a carrier administration fee?

A. Again, there's cost in and cost out. We have gone through this over and over and over and I keep saying the same thing. I don't know if you're looking for a different answer.

Mark Greco

Q. But that's factored into this, isn't it, as part of your margin?

A. Yes, all of our costs and all of our revenues.

Q. And again, the supporting documentation for the Oasis summary, if I ask you for the supporting documentation, in order to calculate the margins and to show what all went into that margin calculation, you'd be able to print out something; right?

A. Yes. Yes, I believe so.

Q. On this same page of Exhibit 13, the equipment recapture, I think you've talked about that, and the recapture times the months not honored, right, that gives you the 17,000?

A. Yes.

Q. Are there any other damages that you are claiming that GLeS is entitled to?

A. Just the remaining open balance for unpaid fuel, whatever's in their accounts receivable.

Q. And what is that, what do you believe that amount to be?

A. If you go to the second stapled package, it has --

Q. Of Exhibit 75?

A. Yes. I'm sorry.

That is Delmar invoices versus actual payments and reflects their open balance, which many, many pages back is $408.61, is the open balance for Delmar.

I'm sorry, it's the very first page. The very first section in the front is Oasis summary of invoices and payments. If you go to the last page of that the remaining open balance is $35,332.42.

Q. I take it if you go back to Exhibit 60 -- I'm sorry, 66 in your stack there?

A. Okay.

Q. You recognize that letter, do you not, that was the termination letter related to Laurel Oasis?

A. I received the letter, yes.

Q. If you look on the second page of that letter, various amounts are itemized totaling 39,705.17. Do you see that?

A. Yes.

Q. Your number that you just gave for this location, Laurel Oasis, as reflected in Exhibit 75, the 35,332.42, that does not give, or does not recognize the amounts that the Glenns subtracted pursuant to this Exhibit 66; correct?

A. Yes. I don't know that there's any basis for

this, for the amount that they have on this paper.

Q. Did you recognize that the Glenns were entitled to gas commissions for this location?

A. Yes.

Q. Did you ever pay gas commissions for this location?

A. Yes.

Q. Did you ever pay all the commissions that were owed for this location?

A. Yes.

Q. You did?

A. Yes, sir.

Q. All the way up through the date of this termination?

A. Yes, and they are itemized in Exhibit 75.

Q. Show me where they are itemized? Is that on the first page of the document on the open balance where it says "commission"?

A. That is a journal entry for a period of time for a portion of the commissions. Actually, some of the commissions were deducted automatically by the Glenns before remitting funds to us, but this represents a portion of it.

The contract actually provided for them

to collect the money, deduct their commission, and then remit the balance.

Q. So you are saying that 11,536.92 was paid in commission?

A. It was applied against the money that they owed us, and that's how the payment was applied. It was money earned by them and applied to their open balance.

Q. On July 31st, 2006?

A. Yes.

Q. Show me where any other commissions were paid?

A. They were deducted by the Glenns before remitting funds to us.

Q. That's your understanding?

A. Yes.

Q. The amount that you are claiming in Exhibit 75, how were credit card fees handled on this?

A. Exhibit, I'm sorry?

Q. The 35,332.42 that you claim the Glenns owe for the Laurel Oasis location, how were credit card fees handled?

A. I'm not sure I understand.

Q. Did you believe that for Laurel Oasis that the Glenns were responsible for credit card fees or was

that something that GLeS was responsible for?
A. They were responsible for the fees associated with the diesel, but not on the gas. The gasoline was a sale that we were doing and they were just a commissioned agent and we were responsible to pay our fees on that.
And on the diesel fuel, they purchased it strictly at a price over cost, and then they, in turn, sold it to their customer.
Q. And is that how, in fact, the relationship worked with the Glenns at Laurel Oasis, that you did not charge them for credit card fees?
A. Say that one more time.
Q. Did you or did you not charge the Glenns for credit card fees at Laurel Oasis on gasoline?
A. On gasoline?
Q. Right.
A. No.
Q. So it's your testimony that GLeS absorbed all the credit card fees on gasoline?
A. Yes.
Q. And that the Glenns were to absorb on diesel?
A. Yes.
Q. Was that pursuant to the contract for that

location that you assumed from Peninsula?
A. I don't know if it's specifically explained or not. Without going through, I don't know.
Q. Let me ask you about Exhibit 14.
A. Okay.
Q. Have you seen that letter before?
A. Yes, I have seen this letter.
Q. You responded to that letter, did you not, in Exhibit 15?
A. Yes, many times.
Q. Is Exhibit 15 your response?
A. Yes.
Q. Now, you say on Exhibit 15 in the response paragraph, the big paragraph in the middle, about the fourth or fifth sentence, "As you are aware, we have made you an extremely competitive offer to extend our relationship another ten years"; right?
A. Yes.
Q. And by this time you were already having discussions with GPM, were you not, by March of 2006?
A. I don't know.
Q. And then you say, "I believe this shows our commitment to you as our customer"; right?
A. Yes.

Q. And did you know what they were talking about that monies that they had not received from you where Mr. Glenn said in Exhibit 14 that we have not received payment of all monies owed and by being overcharged the freight?

A. Yeah. I read his, what he was asking for, but there's no provision in the agreement that says what freight is. It's not specifically provided for.

Q. Wasn't he questioning you about that freight administration charge that had not been imposed by Peninsula?

A. No. What he was asking was that they told me that Eagle had quoted them substantially cheaper rate to deliver fuel and that we were obligated to use the lowest possible freight carrier, which is not a provision in the contract. And we actually took the handwritten piece of paper that didn't have any letterhead and went to Eagle and said is this correct, and they came back and said, there's no way that they could possibly deliver for the price that was on that paper.

Q. What was that paper, the handwritten paper?

A. It was a handwritten blank sheet of paper with their location and a number written on it that they

said Eagle could deliver freight for, and quite frankly, I couldn't understand how they could. And I went to Eagle myself and they said, no, they could not do that.

Q. Well, the freight rate, there's a specified rate per gallon, is there not, to a location from the terminal?

A. Yeah.

Q. And in this case, it was, what, about 1.57, or something like that?

A. I don't know off the top of my head what it would have been.

Q. On any documentation that the Glenns received with respect to deliveries to Delmar --

A. Uh-huh.

Q. -- was the actual freight charge shown on there?

A. I don't believe so. I believe that's why we had the other exhibit that we went through earlier that broke down what the price was.

Q. And then you say in Exhibit 15 that you are being charged Sweet Oil's applicable delivery to your locations, which is not subject to audit under the contract. I do not see how you could establish if you

were overcharged when there's no businesses for this discrepancy.

So you didn't believe that they had a right to question the amount that you were charging them for freight under the agreement?

A. I didn't believe that the basis of their allegation was correct. What they expressed to me was that we had an obligation in the contract to provide them with the lowest possible carrier and the contract doesn't say that.

Q. The ten-year agreement that you mention in here that you made a very generous or competitive offer to extend the relationship another ten years --

A. Yes.

Q. -- did you tell the Glenns at that time that you were contemplating transferring these supply agreements to GPM?

A. I don't believe at that time we had any firm agreements with GPM. I don't know the exact time frame, but I'm sure that we didn't have anything signed at that point.

MR. STORM: This might be a good place if we want to break.

MR. YOUNG: I'll agree.

(Lunch recess, 12:40 p.m.)

(Resumed, 1:20 p.m.)

BY MR. STORM:

Q. Mr. Greco, let me direct your attention to 2006, and we are still on the Delmar location.

A. Okay.

Q. An issue developed in 2006 about the credit card processing at that site; right?

A. It actually existed prior to that.

Q. Ultimately my clients were no longer able to process Mobil credit cards; right?

A. Yes.

Q. And that was, I think we talked about this, it was due to their system not being able to communicate with the Sunoco system; right?

A. Yes.

Q. If you will look at Exhibit 16, can you tell me what that is?

A. It looks like a page out of a bank statement.

Q. Do you see the ACH withdrawal that is the third from the bottom, the Sunoco payments?

A. Yes.

Q. And then there's a note, somebody's note there.

Do you recognize that?
A. Yes.
Q. Is that yours?
A. Yes, I believe it is.
Q. And it says, "Sunoco unauthorized debit of Mobil incentives"?
A. Correct.
Q. What is that?
A. That was, Sunoco went into our checking account and debited the amount of the incentive payments for Delmar and Duck-In, just took the money out of our account.
Q. That was in, it looks like, March of probably 2007; right?
A. Yes.
Q. And your view was that Sunoco wasn't authorized to do that; right?
A. Correct.
Q. Let's look at Exhibit 17, and the next 20 or so exhibits, I think, are really e-mails that came from, was part of the document production.
A. Okay.
Q. So I'm going to have you identify most of these, but I'm going to try not to spend any more time

on them than we have to.
A. Okay.
Q. Let's look at Exhibit 17, and I think you previously mentioned Dolores Love was the Sunoco rep; right?
A. Yes.
Q. And this was a memo or an e-mail from you to Dolores Love; right?
A. Yes.
Q. Dated December 16, 2005?
A. Yes.
Q. And just one clarification, all of these, I think, or a lot of these have Kimberly Kelly's name, and I'm assuming she is somebody who printed them out?
MR. HUTCHISON: I actually can explain that. She is my secretary and when things were sent to me, I simply sent them to her to print, and so that is an addition that is not part of the original.
MR. STORM: Understood. That's what I assumed happened. I just wanted to clarify that.
THE WITNESS: I see a reference, you had asked before about Deepwater.
BY MR. STORM:
Q. Right.

A. That was a Coastal branded location that we made an offer to supply when his contract ran out, but we eventually never did supply, he was never a Sweet Oil customer.

Q. Then you say, "I understand the rebranding cost from Mobil to Sunoco can come from a program, but how about the ones entitled to Mobil money which is contractually passed from us to the dealers? Will that continue until it is done?"

What were you referring to there?

A. Sunoco had offered an additional incentive for the Glenns to convert from Mobil to Sunoco, and what I was asking was would they continue to receive the money that was due under the original Mobil agreement, plus the additional incentive. That was the question.

Q. And what did she say?

A. Yes.

Q. And that was if they signed a longer-term contract; right?

A. Yes.

Q. And then the reference in the last paragraph to the EOL issue, what is that?

A. End of life issue.

Q. What's that refer to?

A. That was, some time in 2005, ExxonMobil started sending out letters to all ExxonMobil dealers that were on their, I think they call it a tandem, or whatever their platform is that processed credit, saying that that platform was going to be eliminated at some point, and they gave a series of different dates, which I guess were pushed back at different times.

But the eventuality was that that platform was going to be discontinued and everyone was going to have to go to another platform, which eventually became the Sunoco platform.

Q. Weren't credit cards being processed through Sunoco already for the Mobil cards, or how was that being done?

A. It was being done, the actual credits were being paid to us by Sunoco, but Sunoco was receiving them somehow through Exxon, ExxonMobil's network. And I think they actually had a third-party provider.

Q. Go to the second page of this. Dolores Love is saying that they are still working, with the economic group to finalize a Sweet Oil deal, which will cover all conversions you make to Sunoco.

Do you see that?

A. Yes.

Q. Did you ever reach any agreement with Sunoco about that?

A. We did, but we didn't convert any of the sites to Sunoco. Without the gallons from the Delmar location, the other two remaining Mobil branded sites didn't qualify.

Q. In the middle of this page, she says, "In the meantime, you have the one Mobil EOL situation. I would recommend that we bag the sign and change the station over to Sunoco."

Was that the Glenns location she is talking about?

A. Yes. Because their credit card processing system, cash register, whatever it was, was not compatible, that's what she was referring to with the end of life situation.

Q. How about Exhibit 18?

A. That was, after numerous conversations where the current contract did not provide what the Glenns believed that it did, requiring the lowest possible carrier -- I don't know the exact, what their request was, but this actually gave them or proposed to give them the ability to go out and find their own trucking company.

Q. Wasn't the Glenns complaint about the freight, that the freight was so much higher with GLeS than it had been with Peninsula?

A. I don't know that it was so much higher. I mean that's kind of a -- I don't know -- a generality. I think it may have been different. I don't know. I don't know what Peninsula was being charged or what they were charging the Glenns. It's possible that they weren't even charging what Eagle was charging them. I have no idea.

Q. In the conversations that you had with the Glenns about the freight, that was the complaint, wasn't it, that the freight was higher now since GLeS took over?

A. I guess they were not happy that we changed carriers, but Eagle was not capable of serving our entire network and when we went out and bid, we got the best carrier that could satisfy all of our customers as best as possible.

Q. How about 19, can you identify that for me?

A. Yes. That's an e-mail from John Collins, who was one of the employees in our office. And this is talking about what would be necessary in order to bring the Glenns' Delmar location up to the compatibility

with Sunoco's network.

Q. And this is in December that he is saying that he spoke with Vern at JCV and gave him the go-ahead to order the materials to convert the site to Sunoco's network; right?

A. Yes. Vernon is the owner of JCV, or one of the owners of JCV. And he came back, and I don't remember the exact price, but it was a very small amount, a couple thousand dollars was all that was necessary. And anticipating that because it was such a small amount of money that he didn't think the Glenns were going to have a problem with it, he told them to go ahead and order it and then later we had to cancel it.

Q. His e-mail was in response to your e-mail just before that that said we are going to be Sunoco; right?

A. Yes, at that time I believe we were.

Q. Where you gave him the go-ahead?

A. Yes.

Q. That was obviously without having reached any agreement with the Glenns about Sunoco?

A. We actually were going back and forth, myself and Bill, and I think there are several e-mails that discuss that.

Q. How about Exhibit 20?
A. Yes. This was a correspondence from Dolores at Sunoco back to me.
Q. And this is in December, right, her telling you what you are supposed to be doing in order to be getting the incentive money; right?
A. Yes.
Q. So obviously at this time you hadn't yet submitted any request to get the Mobil incentive money?
A. Yeah. Upon completion of a quarter, there's a form that gets filled out, and December would have been the end of the quarter.
Q. Were the Glenns taking other credit cards at the Delmar location, do you know?
A. I believe they were accepting Fuel Man. I'm not sure about others.
Q. So they were still able to process, even after the Mobil card was cut off, they were still processing credit cards; right?
A. Yeah, bank cards and -- I'm sure some other cards.
Q. Can you identify Exhibit 21 for me?
A. Yes. This is an e-mail from myself to Bill.
Q. Among other things, you say in the paragraph

at the bottom of the page, "If you elect to stay on the ExxonMobil system, which I do not recommend, it will cost you approximately $4,500, and you will eventually need to move to the Sunoco system anyway since Sunoco owns your Mobil contract."

And then you say, "I would suggest we make a complete conversion to the Sunoco POS at the same time we convert your signage, et cetera, so there's no confusion on the customers' part."

Now, what did you mean by that, that there wasn't any confusion?

A. Well, there's an expectation of a customer carrying Mobil plastic, Mobil credit cards to be able to accept a Mobil card at a Mobil station. The same with Sunoco. And if we were to brand the site Sunoco, the customer with Sunoco credit cards would expect that it would be accepted, so we should make one complete conversion all at one time.

Q. And in order to make this conversion, it was going to cost $4,500; is that right?

A. Approximately.

Q. 22, another e-mail?

A. I don't have a 22. I have a 21, 23.

Wait a minute, it's stapled to this one.

Q. All right.
A. This is another e-mail correspondence between myself and Bill Glenn.
Q. 23, how about 23?
A. Same.
Q. By this time, Speedpass was already turned off?
A. Speedpass and debit.
Q. Do you know at the time that the Delmar location was converted to a Mobil station in 2002, whether all of the credit card processing equipment at that time was new equipment to allow the Mobil credit card and Speedpass to be used?
A. I honestly don't know. I wasn't there in 2002.
Q. And then in the second paragraph, you say, "In addition, Sunoco purchased your Mobil supply agreement and intends to convert your Mobil, as well as all other Mobils."
Do you see that?
A. Yes.
Q. Was that a true statement?
A. Yes.
Q. 24, do you recognize that letter?

A. Yes. That's a letter from Charlie Glenn to my office.

Q. And did you respond to that letter?

A. Yes, I did.

Q. How about, in this letter, Mr. Glenn asks when we can expect to receive our Mobil incentive money.

Do you see that?

A. Yes.

Q. I assume there had been no multiple incentive money paid as of April 18th of 2006?

A. I don't know that to be the case. It doesn't say if any previous payments were made or not and without documentation, I couldn't tell you if it was.

Q. 25, can you identify that for me?

A. This is an e-mail from Dolores at Sunoco to myself and Ben LeRoy.

Q. Below this is an e-mail from Dolores Love to Jeff Byard at Sunoco; right?

A. Yes.

Q. Where she is saying, "Jeff, one of the Sweet Oil dealers is giving Sweet a hard time about everything. They want something in writing that proves to them that Sunoco has the right to convert him."

Do you see that?

A. Yes.
Q. Then at the end of that it states, "But what is my next move if he doesn't want to convert to Sunoco?"
Do you see that?
A. Yes.
Q. You would agree, would you not, Mr. Greco, that the Glenns and their entities didn't have an agreement with Sunoco; Sunoco wasn't a party to any agreement that they were in?
A. Not directly.
Q. And then as a result of this e-mail, Sunoco was going to have their lawyer look into all this; right?
A. Yes.
Q. And that's Dick Gaines, is it not?
A. Yes.
Q. 26 appears to be an e-mail back to Dolores from you saying that a letter from Sunoco's lawyer would help; right?
A. Yes.
Q. Because this dealer thinks he can choose to rebrand or not?
A. Yes.

Q. And 27 is what?
A. It is an e-mail message from myself to Bill Glenn.
Q. With fee schedules on the Sunoco, what, credit card processing?
A. I believe it was, it was the cost of the satellite rental for processing credit and other credit card fees.
Q. Let me ask you, your Exhibit 27 goes to, what pages are included in 27?
A. One, two, three, four, and then one that doesn't have a number.
MR. HUTCHISON: I think it goes to 236 in terms of the Bates numbers, just for point of reference.
MR. STORM: Mine has some additional pages here.
BY MR. STORM:
Q. Let's look at 28, tell me about that, what is that?
A. This is a letter from myself to Bill and Charlie Glenn.
Q. Dated May 16th, 2006; right?
A. Yes.

Q. In this letter, the second paragraph, it says that if you choose not to extend, Sunoco will still rebrand; right?

A. Yes.

Q. Is that what Sunoco was telling you, that it was going to rebrand this site?

A. Yes, that it was going to go from Mobil to Sunoco and they had a choice, they could either just run the balance of the existing contract term, or if they accepted the additional incentives, they wanted us to issue a new contract for a new ten-year term.

Q. Let's look at Exhibit 29.

Is this the letter that Sunoco generated in response to your earlier e-mails?

A. I believe it is.

Q. This was, if you will, a friendly letter from Sunoco, wasn't it, that you could pass onto the Glenns --

A. Yes.

Q. -- that describes Sunoco's position on this; right?

A. Yes.

Q. And at the end of this first page, Mr. Byard says, "The agreement you have, or your assignor

Peninsula Oil had, with Delmar is and always has been, subject to this brand change right"; right?

A. Where is that at?

Q. At the bottom of Page 244.

A. Yes.

Q. But they are talking about the agreement between Peninsula and Tosco; right?

A. Yes.

MR. HUTCHISON: Objection. When you said "the agreement between Peninsula and Tosco," I don't think that's what it refers to.

MR. STORM: Actually, you might be right now that I look at it.

MR. HUTCHISON: Thank you.

THE WITNESS: "The agreement you have, or your assignor Peninsula had, with Delmar."

BY MR. STORM:

Q. Do you know what agreement he is talking about, whether he is talking about the distributor agreement or whether he is talking about the dealer agreement?

A. It sounds like it is the dealer agreement.

Q. But obviously you didn't write the letter; right?

A. No. It's from Sunoco.

Q. And he then says, "Sunoco has advised you that your remaining Mobil accounts must be converted immediately"; right?

A. Yes.

Q. Then the next exhibit, Exhibit 30, Dolores writes back to you and says, "Mark: How did you make out with the letter from Jeff?", right, which I'm assuming is that letter we just looked at; right?

A. Yes.

Q. Then she says, "I saw Scott Cheek today in a meeting and he said he finally is able to shut off the EOL platform, that they did allow some stragglers extra time, but it is over tomorrow."

Do you see that?

A. Yes.

Q. This is something that Sunoco was in control of, was it not?

A. Yes.

MR. YOUNG: Objection to form.

BY MR. STORM:

Q. Then when you write back and say, "Dolores, thanks for the preview. I will not circulate outside the office. I will keep it to myself and partners."

What does that mean?
A. Where do you see that? Oh, down below?
Q. At the bottom, right.
A. That must be referring to some previous correspondence that we had.
Q. You are talking about the letter, is that what you are talking about?
A. I don't know. It doesn't say.
Q. When you say, "They may not react until it becomes real. They may not believe us that it is going to go away," what are you talking about there?
A. That was the end of life of the credit card platform. Originally ExxonMobil issued a date and then another date and then Sunoco gave us a date, and there were several extensions of that date, and I think that's what is being referred to at the top of Exhibit 30, that they allowed some additional time for stragglers, but it is over tomorrow. That means that it's not going to be extended any further.
Q. And when you say that ExxonMobil issued a letter --
A. Yes.
Q. -- did you see a letter like that from ExxonMobil?

A. I actually spoke to John Evans, the controller for Peninsula Oil, who told me that they had received correspondences from ExxonMobil that they had passed on to the Glenns letting them know that this was coming. And I don't know what the original date of the end of life was proposed to be, but all of our correspondences came through Sunoco.

Q. How about 31?

A. It's an e-mail correspondence from Dolores at Sunoco to myself.

Q. Saying, "The site has been shut off. What is the status on your end"; right?

A. Correct.

Q. If the Glenns had spent this $4,500 that you were telling them to spend, would Mobil cards still have been processed at that time?

A. Yeah, I believe so.

Q. But only until February; right?

A. Yes, I believe so.

MR. YOUNG: Point of clarification, February of '07.

BY MR. STORM:

Q. February of '07.

A. Yes. As part of the conversion from Mobil to

Sunoco, Sunoco was picking up the cost of anything to make it accept Sunoco, including the reimage of the station, the signs, the colors, the painting, all those things.

Q. Was this end of life issue an issue that was unique to sites that were going to go from Mobil to Sunoco?

A. I believe it was, yes.

MR. YOUNG: Can you read back that question and answer.

(The question and answer were then read back by the reporter.)

BY MR. STORM:

Q. Exhibit 32, can you identify that?

A. Yes. This is a letter from Charlie Glenn to myself or to our company.

Q. He is asking, A, when do you intend to remove the Mobil brand; right?

A. Yes.

Q. And then he is asking when can they receive their Mobil incentive money; right?

A. Yes.

Q. So this is May of 2006 and you have been in the contract since, what, September of '05; right?

Mark Greco

A. Yes.

Q. And they are writing to you asking when they can receive their monies, and he says, Third request, first from letter dated 3-15-06, second from letter dated 4-18-06.

Do you see that?

A. Yes.

Q. I think the next exhibit, Exhibit 33, responds to that letter; right?

A. Yes.

Q. It was your position, was it not, that this whole change from Mobil to Sunoco was something that the FTC had somehow mandated?

A. Yeah, that's the way I understood it to be.

Q. But you know now that wasn't the case; right?

A. I don't know that.

Q. Well, have you ever seen a document that says, from the FTC, that the Mobil brand has to be changed to Sunoco?

A. No, I haven't.

Q. What basis did you have for making that statement in this letter of June the 5th of 2006?

A. We were instructed by Sunoco that they were converting all the Mobil sites in the Mid-Atlantic

area, that they had purchased the rights to supply those locations.

Q. And that's how you interpreted what they had told you?

A. Yes.

Q. Then you say that Sunoco's market share should help them feel good about the conversion, right, do you see that at the end of the first paragraph?

A. Yes.

Q. And that market share was the document we already talked about?

A. The Lundberg report that was produced by Sunoco, yes.

Q. And that was supposed to make them feel good that Sunoco had a lower market share?

A. They had a substantially larger market share than Conoco did, who was the Mobil supplier.

Q. But not the combined ExxonMobil market share?

A. The ExxonMobil that's listed on there was Exxon, not Mobil. So to get the Mobil brand, you had to look at the Conoco listing on that report.

Q. Because that's what you were referring to?

A. Yes.

Q. But anything with Conoco, to the public in

this area, in the Mid-Atlantic region, at least in Delaware and Maryland and Virginia and District of Columbia, the public saw the Mobil sign, right, they didn't see a ConocoPhillips sign?

A. Correct. All the Mobil branded sites were supplied through a Conoco agreement.

Q. So unless the public was attuned to the fact that the sign that said Mobil was really Tosco to ConocoPhillips, later Sunoco, that the public would see a Mobil sign; right?

A. Yeah, the public would see the Mobil sign. But what this is referencing is the Lundberg report, which describes market share, and the Mobil branded market share was listed as Conoco on that report.

Q. So in your mind, in terms of this being a good thing, it was that you should be looking at the ConocoPhillips market share, not the ExxonMobil market share?

A. Correct.

Q. I think we established earlier, though, that the ExxonMobil customer could use the ExxonMobil card at ConocoPhillips Mobil stations?

A. Yes.

Q. Such as the Delmar station?

A. Yes.

Q. Then later at the bottom of this letter, in the fourth paragraph, you say that, "This is not the case, as Mobil has become Sunoco in the Mid-Atlantic states by FTC decree."

Do you see that?

A. Yes.

Q. You are telling Mr. Glenn that they have no say in whether they want the Sunoco brand, right, isn't that what you are saying in this letter?

A. The way that it was explained to us was that the FTC had to qualify the successor. Originally at the time of the ExxonMobil merger and divestment and then all future successors down the line to Sunoco. And the FTC qualified and approved Sunoco to be that successor.

Q. And you are saying that for some reason that was going to negate the right that the Glenns had in their contract to have any say in the brand at their station?

A. As it was explained to us by Sunoco, that they were rebranding all of the sites in that Mid-Atlantic area.

Q. And Sunoco told you, this is what we are

doing; right?

A. Yes.

MR. YOUNG: Objection.

BY MR. STORM:

Q. Exhibit 34. Another e-mail; right?

A. Yes.

Q. This one to Dolores Love?

A. Yes.

Q. And you say, "They refuse to respond to my letters and e-mails." This is on June the 9th, 2006?

A. Yes.

Q. "We are keeping pressure on them to rebrand."

A. Yes.

Q. Well, they weren't refusing to respond, were they, they were corresponding with you? You had just gotten a letter from them dated May 22nd when they were asking where is our money?

A. They were corresponding, but they weren't answering the question whether they were going to accept the Sunoco incentive to convert. There was just non-response.

Q. On Exhibit 35, June 20th, '06, Mr. Glenn writes to you and makes it very clear that it is not their intention to change to Sunoco; correct?

A. Yes.

Q. And he disputes your position about the FTC decree; right?

A. Yes.

Q. And then he tells you that they spent four years building up the ExxonMobil credit card base?

A. Yes.

Q. And then he says in the next paragraph that you have been overcharging on freight and that you failed to pay us three cents per gallon incentive money due us for the last ten months; right?

A. That's what it says.

Q. And your letter states you intend to pay us only two cents per gallon, do you see that?

A. I don't know that we intend to pay them anything. Whatever they were due is what we would have paid them. It was just a typo or something.

Q. But do you agree that by June of '06 you hadn't paid them any incentive money?

A. No. Any money that we had received from Sunoco after the notice that Sunoco gave us that they were in breach went into escrow and we still hold that money.

Q. My question is, as of June 20th of '06, had

you paid them any incentive money?
A. I don't know that.
Q. Exhibit 36, another e-mail from Dolores Love. Dolores Love is saying that my clients are in violation of their contract; right?
MR. YOUNG: Objection to the form, unless you are just asking what the e-mail states.
THE WITNESS: Can you state the question one more time?
BY MR. STORM:
Q. Miss Love states that, "Now that they are not processing credit cards, they are in violation of their contract. You should no longer supply them Mobil-branded gas and the sign needs to be bagged until we get it debranded or preferably converted to Sunoco"; is that right?
A. Yes.
Q. And after this e-mail of June 20th, did you continue to supply them with Mobil-branded product after she's telling you not to?
A. I don't know what the last day is that we supplied.
Q. On the delivery documents that my clients would have received with any motor fuel delivery at

Delmar, it would have identified the product that was being delivered to the site, right, as either Mobil product or some other product; right?
A. Yes.
Q. Because it shows the point of origin; right?
A. Yes.
Q. And that's on the bill of lading and also on the invoice; correct?
A. Yes.
Q. 37. Another e-mail from Miss Love; right?
A. Yes.
Q. And then she again tells you you can't even deliver Mobil product to the site. Mobil is very strict on situations such as this, so we need to move quickly.
And then she says, "He is no longer a Mobil dealer. His options are to convert to Sunoco or pay all penalties and go unbranded." Right?
A. Yes.
Q. So nothing being said up until this point in June of 2006 about any other potential brand that you indicated you had discussed with the Glenns; right?
A. No. This is a correspondence from Sunoco. They don't have the ability to offer other brands.

Q. Sunoco is still telling you that it's either going to go Sunoco or it's going to go unbranded?

A. Yeah. But that's not what the intent of the letter is. It's going to go Sunoco or not be a Sunoco branded site. It can be someone else's brand. By unbranded it just meant not Mobil.

Q. 38. You are writing Dolores back; right?

A. Yes.

Q. And you are copying her on a letter from Mr. Glenn regarding their position, which I assume is that letter we just talked about, the June 26th letter?

A. It says June 20th.

Q. June 28th.

A. No, the attachment says June 20th. 062006.

Q. So is that likely the Exhibit 35 letter?

A. Yes.

Q. And then you were asking Miss Love to have Sunoco's legal department help out with the FTC issue; right?

A. Yes, I was asking documentation from them.

Q. Then the last thing you say is, "We are all in this together and want the same goal to get them converted to Sunoco."

A. Yes.

Q. The next exhibit, 39, is an e-mail that you appear to have been copied on from Miss Love to Jeff Byard at Sunoco and Dick Gaines, Richard Gaines at Sunoco; right?
A. Yes.
Q. Exhibit 40 is an e-mail back to you from -- well, you are sending an e-mail to Mr. LeRoy and to Bill Sweet and John McTear. Who is he?
A. He was our controller at the time.
Q. And to Steve Labroli, who was one of your lawyers at the time; right?
A. Yes.
Q. Attaching a memo from Bonnie Chong in the Sunoco legal department; correct?
MR. YOUNG: Objection.
THE WITNESS: Yes.
BY MR. STORM:
Q. At the bottom of that memo, on the first page of that memo that's Page 381, at the bottom, do you see that?
A. Yes.
Q. She says that with respect to the dealer's claim that it is owed incentive money by Sweet Oil, that issue does not involve Sunoco and should be

addressed between Sweet Oil and the dealer.

Do you see that?

A. Where is that?

Q. The last sentence at the bottom of the page.

A. Okay.

Q. What did you do with this memo after you received it? Did you ever provide that to my clients?

A. I don't know. That's a long time ago.

Q. The next exhibit, 41, it is an e-mail from Dolores Love to you; right?

A. Yes.

Q. Attaching the documentation for incentive payments; right?

A. Yes.

Q. And she is saying no second quarter affidavit has yet been received; correct?

A. Yes.

Q. And that's in July; right?

A. Yes.

Q. Until you submit the affidavit, you don't get your money, so the Glenns wouldn't get their money; right?

A. Correct. Because we escrowed the previous incentives, we didn't apply for any additional

incentives until it was resolved.

Q. When did you first notify the Glenns that you were escrowing any monies?

A. I couldn't tell you.

Q. If you look at the second page of this e-mail, there appears to be another e-mail from Inga Wilson to Karl Beckers at Sunoco, you recognize that?

A. Yes.

Q. Somebody is saying to Karl, 12,222.52 for the fourth quarter 2005 was paid on March 28th, 2006.

Do you see that?

A. Yes.

Q. And you don't know whether you paid that to the Glenns or not; right?

A. That amount is made up of more than just their location.

Q. Right below that it says, "No first quarter '06 credit has been issued yet. I do not have the affidavit for first quarter '06."

MR. YOUNG: I think it says "I do have."

MR. STORM: Excuse me.

BY MR. STORM:

Q. I do have the affidavit in the amount of $5,539.76; right?

Mark Greco

A. Yes.

Q. And then the question, "Am I to hold 4,503.44, the amount issued for Duck-In, in error and pay the balance? Also are gallons to be paid at two cents per gallon. Are all gallons to be paid at two cents per gallon"; right?

A. Yes. It was a typo on the form. It should have been three.

Q. Then if you go back to Page 388 of that same exhibit, there's an e-mail from Mr. Gaines to Dolores Love.

Do you see that?

A. Yes.

Q. In Item No. 3, Mr. Gaines said, "The dealer's right to use the Mobil marks is subject to Peninsula's rights, which in turn are subject to Sunoco's rights, so dealer has no superior right to keep the Mobil mark. If his contract with Peninsula somehow said this, which I don't know not having seen it, then his complaint is against Peninsula who had no authority to provide such a right to the Mobil mark."

Do you see that?

A. Yes.

Q. And that was in August of 2005, I guess, that

Mr. Gaines is saying that; is that right?
A. Yes.
Q. And that was before you even acquired the interest in Peninsula; right?
A. Yes.
Q. Was that in response to a question on the page that follows that says, "What happens if one of the sites that is still collecting an incentive payment refuses to change to Sunoco and wants to remain Mobil until the end of their contract?"
A. That's a correspondence that occurred prior to our involvement.
Q. Was that an issue that you had raised with Sunoco prior to the time that the assignment document was executed between GLeS and Sunoco?
A. It may have been. I don't know.
Q. 42, another e-mail from Miss Love. She is saying that, asking you to confirm that the sign has been bagged, right, has been covered?
A. Yes.
Q. And once that's been resolved, we can move forward with either the Sunoco brand or he can pay back the penalties and you can offer him BP, that's what Dolores Love is saying; right?

A. Yes.
Q. So by this time, you are having conversations with Dolores Love about converting it to a BP; right?
A. I think she made the assumption BP because we had a lot of BP locations, but I think her intention was we can offer them something other than Sunoco.
Q. Then she says he also has issues with getting his incentive money and freight rates. I am not involved with the freight rates but Sunoco did pay you the incentive money. Was he confused?
Do you see that?
A. Yes, I see it.
Q. This was incentive money that she is talking about that Sunoco has paid to GLeS, but that GLeS hasn't yet paid to my clients; correct?
A. Yes, that's correct.
Q. I think Exhibit 43 gets us out of the e-mails.
Let's look at 43 a minute, and this was an announcement that you sent out to your customers, was it not, announcing that you have signed preliminary agreements with GPM?
A. Yes.
Q. And this is on August 30th of 2006; correct?
A. Yes.

Q. And by that time, I'm sure that there had been communications back and forth between GPM and GLeS over trying to reach a potential structure; right?

A. Yes.

Q. And I think I asked you earlier whether the price that GPM was willing to pay you, whether that price was a price that was allocated per site or per supply contract and whether that price ever varied as a result of these two sites being taken out of the package?

A. No, it wasn't allocated by site and, no, there was no adjustment for these locations.

Q. Do you remember what the total purchase price was?

A. At the time we signed the agreement that's referenced in here, I don't remember the original number, but I know that it changed several times from that point forward. There were some further negotiations. I don't remember what the number was at that time.

Q. What did the number end up being?

MR. HUTCHISON: Objection. I don't see how that's relevant.

MR. STORM: Again, it is relevant to the

extent, although I guess he said now that the price never changed as a result of these two sites coming out, so if I understand --

THE WITNESS: It didn't change because of these locations. It changed for other factors.

BY MR. STORM:

Q. I think, again, that information -- and you and I will have further discussion about this, but I think it was within the scope of the document request --

THE WITNESS: Can I clarify a little bit?

MR. HUTCHISON: No.

THE WITNESS: Okay.

BY MR. STORM:

Q. I will give you an opportunity. If you want to clarify it, you said that the price adjusted for some other things, I assume?

A. The original agreement contemplated selling all the real estate that Primo held also, and later the agreement was changed and Primo retained that real estate and just leased it to GPM. So that's the nature of the change. Nothing related to these locations.

Q. With respect to Exhibit 43 where you say there will be no immediate brand changes or personnel

changes, what was that referring to?

A. That was GPM's intention, at least what they disclosed to us was their intention, not to change any of the brands of the sites. They were just going to continue to do business as usual.

Q. Did they become a distributor for BP?

A. Yes.

Q. They did?

A. Yes.

Q. How about for Sunoco?

A. No. They were prepared to. I know that they actually went through the application process and were approved by Sunoco. But because of the breach and the gallons and all that, they didn't pursue.

Q. So they elected not to pursue a distributorship, for whatever reason, with Sunoco?

A. Well, because the gallons weren't there without the Delmar location.

Q. When you say in this announcement, "Our entire chain will benefit from GPM's buying power in terms of guaranteed supply, better pricing and more competitive brand offerings. We anticipate this transition to be smooth with absolutely no interruption of service to you."

What are you talking about, better pricing?

A. The company operated many, many convenience stores. They had alliances with many of the convenience store vendors. Not only the grocery vendors, but other soda vendors and chip vendors and people that were supplying all of our locations also. The way they explained it to us, that they had negotiated deals that would be extended to the dealers also.

Q. In connection with the ancillary sales, not the motor fuel is what you were referring to?

A. Yes, related to the stores.

Q. There seems to be somewhat of a gap between August 30th, and then we jump to November 2nd, the next exhibit, 44. I believe it is a letter to GLeS and Mr. Sweet from Jeff Byard at Sunoco.

Have you seen that before?

A. Yes.

Q. During the time between the August 30th announcement, Exhibit 43, and the date of Sunoco's letter, November 2nd, 2006, GLeS continued to supply the Glenns' location at Delmar, did it not?

A. I have to go back and verify the dates.

Q. Let me direct your attention to Exhibit 47.
Have you seen that before?
A. Yes.
Q. And then Exhibit 48 is a letter from me to Mr. Hutchison.
A. Yes.
Q. Does that refresh your recollection as to when the relationship ended at Delmar?
A. Yes, yes.
Q. So what I'm trying to understand is, between the summer of '06 and February of '07 when the relationship ended, did your company continue to supply motor fuel to the Delmar location?
A. Yes.
Q. What type of motor fuel was it?
A. Without going through records, I couldn't tell you what it was. I know the station wasn't branded anything, so it would have been whatever product was available at the time. Wherever we had allocation.
Q. Wasn't the Mobil brand still up at that time? Maybe I can refresh your recollection.
A. No. Based on the date of this letter, they non-renewed the Mobil agreement in November and we continued to supply the Glenns until, based on your

letter, until the end of January of '07. So it couldn't have been Mobil.

It's possible that the template --

MR. HUTCHISON: Do you mind if I just, if this refreshes --

BY MR. STORM:

Q. Look at Exhibit 49, which is an e-mail dated January 30th. That might help.

A. Okay.

So it wasn't debranded. It was still branded Mobil.

Q. Does that at all refresh your recollection as to what type of product was being sold to the Glenns?

A. Yes. If it was still branded Mobil, then we would have sold Mobil product to them.

Q. Between August of '06 and this letter of November 2nd of '06 from Sunoco to Mr. Byard, had there been any more communications that you recall with Sunoco given Sunoco's position in the summer of 2006 that you couldn't sell Mobil gas there any more?

A. To the best of my knowledge, I don't think there were.

Q. And I assume that you were engaged to some extent during that period following the August

announcement with trying to finalize things with GPM; right?

A. Yes, due diligence and other activities.

Q. Let's look at Exhibit 44. Sunoco's essentially saying that it is going to non-renew the distributor agreement; right?

A. Yes.

Q. And in fact, the distributor agreement between Sunoco and Peninsula, which GLeS assumed, had been set to expire in 2005, hadn't it?

A. Yes, September 30th of 2005.

Q. Let's look at 45.

Can you identify that for me?

A. This is a letter from Sunoco to our company outlining unamortized balances of the incentive payments that they wanted to be repaid.

Q. And they are advising you that you should tell GPM that; right?

A. Yes. Because it was GPM's intention to become a Sunoco branded distributor should the Glenns have decided that they were going to rebrand to Sunoco.

Q. Now, Mr. Byard refers at the bottom of Page 1, carrying over to Page 2, "the long dormant Sunoco distributor agreement."

What's that referring to?
A. We only had one Sunoco branded site in Glasgow, Delaware, which was rebranded to CITGO at some point during the duration of the contract, and our Sunoco agreement was just never mutually terminated, so it just sat dormant.
Q. So unrelated to this issue, you had had this one Sunoco branded location --
A. Yes.
Q. -- that for whatever reason went CITGO?
A. Yes.
Q. And then you didn't have any Sunoco sites, although you still had an agreement with them?
A. Yes.
Q. And then that agreement was mutually terminated at some point?
A. Yes.
Q. Exhibit 46 appears to be another letter to you from Mr. Byard dated January 23rd, 2007. And this is the letter telling you to debrand the premises immediately; right?
A. Yes.
Q. And then 47 is the document that we already talked about from Mr. Hutchison communicating to

Mr. Snyder, another lawyer for the Glenns, that Sunoco January 23rd letter; right?

A. Yes.

Q. And then 48 is the letter from me to Mr. Hutchison, where I appear to spell his name incorrectly in at least one place -- and I apologize for that -- disagreeing with the position and saying that this conduct amounts essentially to -- well, the letter says what it says. You had received this letter, did you not?

A. Yes.

Q. We talked about 49, and I assume that you did in fact go in to my client's site and accomplish the debranding; right?

A. Yes.

Q. And you did what Sunoco asked to be done?

A. Yes.

Q. This must have also been true, then, at the same time for the Duck-In and Delaware City; right?

A. Duck-In and Deluxe, yes.

Q. Now, at the end of this e-mail, John --

MR. HUTCHISON: This is 49?

MR. STORM: Yes, 49.

BY MR. STORM:

Q. Who is John?
A. John Collins.
Q. He is --
A. He is an employee or was an employee.
Q. And John asks whether, on the third page of this e-mail -- well, at the bottom he says, "Is Sweet Oil still supplying them? If so, what brand fuel is to be delivered? Or is GPM supplying them? Also, you told me Doughboy's Mobil is to go unbranded with another distributor so is Chad supposed to stop delivering Mobil fuel to them on 2-2-07? Also, what about daily price notifications for all of these sites?
Do you see that?
A. Yes.
Q. The daily price notifications, what's that referring to?
A. Whether a dealer buys fuel or not, we send out a daily price fax at the end of the day every day when prices are announced by each of the oil company suppliers, so the dealer knows what the price will be for the next business day.
Q. So that's your price notification --
A. Yes.
Q. -- to the --

A. To the dealer.
Q. To the dealer, okay.
On a location that was a commissioned marketer location where the dealer isn't buying the product, would the dealer still get notifications like that?
A. I don't believe so. It wouldn't be necessary.
Q. And I assume that the notification that would be sent out, for example, to the Delmar location where there was a cost plus price term in the contract, that that price notification for that location wouldn't necessarily be the same as the price notification that was being sent to somebody else who had a different price term?
A. No. Every location was different because the freight to every location was different. Pickup supply point may be different. So they were unique to each site.
Q. So when you would give, for example, at the Delmar location when you do a price notification, would that price notification just be -- it would be a price for the product for that next day and it would include the freight?
A. I believe the price notification included

everything but taxes. I'd have to go back to the system, though, to verify that. I believe that's the way it was done.

Q. And you said that the freight varied from location to location?

A. Yes.

Q. Based on distance differences from the terminal; right?

A. Mileage, tolls, any of those factors.

Q. So those were all factored into the freight rates that the freight company was charging to you?

A. Yes.

Q. Let's look at 50. That's an e-mail from Dolores Love to Mark Greco. "Hi, Mark: Please let me know when the penalty for Delmar has been wired."

What is she talking about there?

A. At that point, I believe GPM had notified them that they were not going to pursue a Sunoco agreement, and based on that fact, they knew that the site wasn't going to be converted to Sunoco. So Sunoco said, if it's not going to Sunoco, the fee needed to be paid and they wanted it paid prior to our sale to GPM.

Q. And then at the bottom they say, "See attached mutual termination of our Sunoco jobber agreement. As

part of this, they want the immediate debranding of Delmar Mobil due to the credit card violation. Additionally, they have waived the Duck-In repayment in the amount of 13,720."

Do you see that?

A. Yes.

Q. Did they in fact waive that?

A. No.

In one of the previous exhibits that we went over earlier, I think I labeled it as unauthorized debit.

Q. From bank account to bank account?

A. And they took that fee also.

Q. Again, that was another document I think we still need to see, is the mutual cancellation with Sunoco.

MR. HUTCHISON: I thought it was in there.

MR. YOUNG: Do you want to see it?

MR. HUTCHISON: I thought it was in there.

MR. STORM: I didn't see it.

Do you have it?

MR. YOUNG: Yes.

MR. STORM: Let's take a break.
(Recess.)
MR. STORM: Let's make this 76.
(Exhibit 76 was marked for identification.)
BY MR. STORM:
Q. Mr. Greco, let me show you what's been marked as Exhibit 76, which appears to be a mutual cancellation agreement.
A. Yes.
Q. Did you sign that?
A. Yes.
Q. And you signed it on January 25th of '07?
A. Yes.
Q. Is that right?
A. Yes.
Q. And Sunoco appears to have signed it on February 5th of '07; right?
A. Yes, that's correct.
Q. I'm a little confused. This says it is dated January 23rd, 2007, and it says it is effective January 25th, 2007, and the letter from Mr. Hutchison to Mr. Snyder is dated January 29th of 2007, Exhibit 47.

Do you see that?

A. Yes.

Q. And Mr. Hutchison's letter says that BCG, Inc., and Chesapeake Products & Services is in breach of its obligation to accept Mobil credit cards. Sunoco, Inc., will no longer provide Mobil branded products to the station.

Do you see that?

A. Yes.

Q. Before that letter was sent, you had already terminated or agreed to terminate the relationship with Sunoco; correct?

A. Yes.

Q. And I take it from what has subsequently happened with respect to the $102,000 incentive payment issue, that the release that's in this document where each side mutually releases each other, that somehow Sunoco and GLeS does not interpret that as applying to this issue?

A. No. The incentive agreement was a completely separate agreement from the jobber contract, and the mutual termination discusses termination of the jobber supply agreement.

MR. HUTCHISON: We don't agree with what

you just said.

MR. YOUNG: Gary, would you permit me to ask a question just for convenience at this point?

MR. STORM: Sure.

BY MR. YOUNG:

Q. Mr. Greco, as you know, I represent Sunoco and I just want to ask you a question about P-76.

P-76, which is the mutual cancellation agreement, applies only to the Sunoco branded distributor motor fuel agreement and branded distiller agreement dated March 21, 2003; correct?

A. Yes.

MR. HUTCHISON: Objection.

BY MR. YOUNG:

Q. You did not supply the Delmar Mobil with Mobil fuels and the license to use the Mobil trademark based on the Sunoco brand in the distributor motor fuel agreement, did you?

A. I don't know how internally you view that. The way it was explained to us was at the time that we did the assignment, was we were taking assignment of Peninsula's agreement, which only lasted from September 1st of '05 to September 30th of '05, and then they contemplated an amendment to our Sunoco jobber

agreement, which would incorporate the Mobil gallons into the Sunoco jobber agreement, which was then terminated by this.

Q. This agreement isn't referring to the distributor agreement that was assigned to you by Peninsula; is it?

MR. HUTCHISON: Objection.

THE WITNESS: No, it isn't.

BY MR. YOUNG:

Q. It was that agreement under which you sold Mobil branded product to Delmar Mobil; correct?

MR. HUTCHISON: Objection.

THE WITNESS: Only until September 30th of 2005.

BY MR. YOUNG:

Q. So it is your position that that agreement terminated on September 30th, 2005, the Peninsula agreement?

A. Yes.

Q. Doesn't Mr. Byard state in one of his letters that you agreed to extend that Peninsula agreement on a month-to-month basis?

A. I don't know. You have to show me that.

Q. I refer you to --

Mark Greco

A. I don't remember exactly, but I believe we got an e-mail from Dolores prior to signing the assumption agreement saying that that agreement, that the Peninsula agreement was not going to be renewed, that they were going to amend our Sunoco agreement to include the Mobil gallons in the Sunoco agreement.
Q. Let me refer you to Plaintiff's Exhibit 45, which is the November 27th, 2006 letter from Mr. Byard to Mr. Bill Sweet.
A. 35 is from --
Q. 45.
A. Oh, I'm sorry.
I see the letter.
Q. In this letter do you see where Mr. Byard refers at the top of the second page to the long dormant Sunoco distributor agreement?
A. Yes.
Q. Do you recall Mr. Storm asking you questions about that agreement?
A. Yes.
Q. And you indicated that there was one Sunoco station that had been converted from Coastal that eventually changed brands?
A. It was Sunoco and went to CITGO, yes.

Q. Is it your understanding that what Mr. Byard describes as the long dormant Sunoco distributor agreement, isn't that the agreement that's referred to in this mutual cancellation agreement?

A. Yes.

MR. HUTCHISON: Objection.

MR. YOUNG: That's all the questions I have for now.

BY MR. STORM:

Q. Did you sign another agreement with any other mutual cancellation other than this one with Sunoco?

A. Yes.

Q. You did?

A. Yes.

Q. And when was that?

A. It may have been the same day. I'm not sure.

MR. STORM: Do we have that one?

MR. YOUNG: Let me ask a question, if you don't mind.

THE WITNESS: Okay.

BY MR. YOUNG:

Q. Was that the Coastal agreement?

A. Yes.

Q. There was another agreement that Sweet Oil had

with Sunoco which allowed you to sell Coastal-branded fuel; correct?

A. It was actually a Coastal Refining & Marketing agreement that I believe was assigned to Sunoco.

Q. And the other mutual cancellation agreement you are referring to canceled that agreement?

A. Yes.

MR. YOUNG: Okay.

BY MR. STORM:

Q. So were you still marketing under the Coastal brand at any location?

A. At that time I don't believe we were.

Q. But Sunoco had assumed the Coastal brand at some point?

A. Yes.

Q. Do you know when you stopped using the Coastal brand?

A. I don't know sitting here. I'd have to go back and research it.

Q. Is that brand still around at all, do you know?

A. Yes.

Q. It is?

A. Yes.

Mark Greco

Q. Through Sunoco?

A. Yes.

Q. So when we talked earlier about whether there was another brand option through Sunoco, Sunoco also had a right to the Coastal brand?

A. Yes.

Q. I think we are at 51, if we go back to where we were. That's another e-mail from you to Dolores Love; right?

A. Yes.

Q. It was this e-mail, right, where you indicated that you were going to pay the money, you were going to file an interpleader action with the court, right, because Sunoco was claiming that it was entitled to the 102,000 back and my clients were claiming they were entitled to the balance of the incentive money; right?

A. Yes. Our position was it was either Sunoco money or the dealer's money, but in either case it was our money, so we really didn't take a position on whose money it was.

Q. Had there been any provision in the agreement that GLeS had with Peninsula regarding incentive monies that had been paid by Sunoco to Peninsula before GLeS took over? My question is whether there was any kind

of indemnity provision in that agreement related to these incentive monies that had been paid before GLeS came into the relationship?

A. No, the indemnity agreement was between the Glenns and Peninsula and they issued a mortgage on the Delmar site as collateral security of that indemnity. And in the supply agreement it says that if Peninsula had to pay, at that time I guess it was Tosco, eventually Sunoco, if they had to pay anything, that it would be reimbursed by the Glenns and it was secured by the mortgage.

Q. Where was that, that agreement?

A. It's in their supply agreement for the Delmar location.

Q. In the agreement between the Glenns and Peninsula?

A. Exactly.

Q. The supply agreement that you are referring to is the one that we have already talked about, right, Exhibit 5?

A. Yes.

Q. There's no other agreement; right?

A. Other than the mortgage and security agreement.

Mark Greco

Q. And if you go back to Exhibit 5, in Paragraph 2 (b), it says that if the dealer breaches any of the provisions of this agreement, dealer agrees to reimburse the company, does it not?

A. Yes.

MR. HUTCHISON: Objection. Half a paragraph.

MR. STORM: Yes, there is more to it.

MR. HUTCHISON: It says what it says.

MR. STORM: It says what it says.

BY MR. STORM:

Q. Among other things, it says that; right?

A. Yes.

Q. You also indicate in this e-mail to Dolores Love that the obligation is secured with a mortgage on the dealer site and we will assign our rights to the mortgage to the court, also to ensure the dealers' obligation if they are found to not be entitled to the money.

Do you see that?

A. Yes.

Q. Has there been any further assignment of the mortgage as it was assigned from Peninsula to Primo Properties?

A. No, I don't believe so.
Q. So right now the holder of that mortgage on its face is Primo Properties?
A. Yes.
Q. And 52, Dolores writes back and says, Thanks for the update. I will forward this to the Sunoco people involved. I'll make sure you get copies of the mutual; right?
A. Yes.
Q. 53 was a page that was produced to us. Was this the first page of your Sunoco distributor agreement?
A. Yes, I believe so.
Q. Just one last question about the Mobil site. The damage summary that we have talked about, which is Exhibit 13, that contains a summary of all of the damages that you are seeking in this action; correct? And we can limit it right now, if you want, to the Mobil location.
A. This is, the only damage is related to gallons not purchased due to the breach. But if there is, if the court determines that Sunoco's entitled to the incentives, then pursuant to the agreement, the dealers then have to reimburse us for that. But we don't take

a position on whose money it is. It is the court's decision. It is either the dealers' or Sunoco's.

Q. But other than the Sunoco incentive issue, these are all the damages?

A. And the balance of their accounts receivables, which we went over in Exhibit 75, yes.

Q. Let's move on to some questions about Laurel Oasis. Starting with Exhibit 54, which is a group of documents that have been Bates stamped SO 94 through SO 119. Were those the documents that were provided to you by Peninsula as constituting the agreements between Peninsula and the Glenns?

A. Well, several of these are outdated. The current agreement is the one dated 1994. Attached here are some old agreements that were replaced.

Q. I take it that all of this was provided to you by Peninsula originally?

A. No, not originally. They gave us the binding agreement and at later dates -- I don't remember if it was Charlie -- I forget -- one of the Glenns had said to us, "No, no, no, there's other additional paperwork." And I said, "I got what I got from Peninsula." And I believe they furnished us additional documents, which actually related to these previous

agreements.
Q. Do you see on the fax at the top up there, March 23rd, 2006, that fax number?
A. Yes.
Q. Do you recognize that number?
A. Yes.
Q. Whose number is that?
A. That was the fax number at our office.
Q. And was that an incoming fax or does that show an incoming fax?
A. That actually was, at the time our office system wasn't capable of scanning, so we faxed it to our scanning system. So it was an internal us to us.
Q. So at least as of March 23rd, 2006, you had all these documents; right?
A. Yes.
MR. HUTCHISON: Well, objection.
THE WITNESS: Assuming the date stamp is correct.
BY MR. STORM:
Q. Do you have any reason to think it is not?
MR. HUTCHISON: Well, when you say "all these documents."
MR. STORM: The documents --

MR. HUTCHISON: That have that legend on it?

MR. STORM: Right. Which appears to be the first --

MR. HUTCHISON: Eleven.

MR. STORM: 94 through 104, anyway.

THE WITNESS: Yes, we must have received them at a different time than the others.

BY MR. STORM:

Q. The ones that are starting at 105 --

A. July 12th of '05, we received other agreements.

Q. And then at the bottom of the page, on 105, there's a date January 25th of 2006.

A. Yes.

Q. So is it your position that the documents, all the 1990 documents are replaced by the '94 documents?

A. That's correct.

Q. Let me direct your attention to the second page of that exhibit, which is SO 095.

A. Okay.

Q. You agree, do you not, that under the agreement that was in place at the time that you assumed the contract from Peninsula with respect to

this location, that gasoline was being handled on a commission basis with the Glenns?

A. Pursuant to this agreement, is that what you are saying?

Q. Pursuant to any agreement?

A. Yes, it was on commission, gasoline only.

Q. They were actually purchasing the diesel fuel?

A. Yes, correct.

Q. Did you have any conversation with Peninsula about what the terms were other than what was in the actual documents and what their course of dealing had been, what Peninsula's course of dealing had been with the Glenns?

A. As far as the commission? The commissions are spelled out in the agreement.

Q. And how about diesel fuel?

A. I don't believe that it actually is addressed in the agreement, the price of diesel fuel, if I remember right. I have to go through it again to verify that.

Q. Well, you recognize in the exhibit, on Page 95, and I understand that you say that the 1990 agreement wasn't in place any longer.

A. Correct.

Q. That diesel fuel was to be the posted transport price at the time of delivery, do you see that?

A. Where does it say that?

Q. The top of the document, starting on the fourth line.

A. Yeah. I assume by this statement that Peninsula posted a price. That's what it says.

Q. Then do you see the asterisk that says not to exceed Salisbury rack prices by more than two-and-a-half cents?

A. Yes.

Q. When you began supplying this location, what terms were you supplying the diesel fuel on?

A. Because it wasn't specifically outlined in the agreement that was given to us, the '94 agreement, we sold them at the same price as in the Delmar agreement, which was a penny over the cost, penny over the rack, plus transportation.

Q. When you added that cost to the freight that you were charging, it exceeded two-and-a-half cents, did it not?

A. There was no provision that said that.

Q. I am just asking you, did it exceed

two-and-a-half cents?

A. It probably did. I don't know.

Q. Do you remember having a conversation with the Glenns in the fall of 2005, shortly after you assumed these contracts, do you remember visiting the Glenns at their stations?

A. Many times.

Q. Do you remember having a conversation with them about the price term in this contract?

A. Yes. They told me that there was other documents that I didn't have, and I asked them many times to furnish them to me and they gave me a lot of outdated contracts, previous contracts.

Q. Including this document; correct?

A. I couldn't say this one specifically, but they gave me documents.

Q. Didn't they tell you that their deal with Peninsula was that the diesel price was not to exceed Salisbury rack plus two-and-a-half cents?

A. It didn't. It was a penny.

Q. With freight?

A. It doesn't say that. It doesn't say including freight.

Q. My question is, did they tell you that?

A. It's possible they did.
Q. Did you go back to Peninsula and ask about it?
A. I don't know if I did or not. In the course of business, when you have been in this business for this long, dealers tell you all kinds of things, but you have to go by what's in the written contract. That's the only thing that I can follow that is for certain.
Q. Well, you saw in the papers that you ultimately received, did you not, the page that is part of this same exhibit at 105, which is a letter to the Glenns from Mr. Williams of Peninsula Oil dated November 15th, 1993, where it talks about the extension of the contract, and the last sentence of the letter says, "All of the other terms of the 12-13-90 agreement remain the same, with the exception of the extension of expiration date, which will also read January 31st, 2008."
Did you see that?
A. Yes.
Q. And you never went back to inquire what all these other terms were?
A. Mr. Williams wasn't with the company when we purchased this from Peninsula, and this agreement was

many, many months before the '94 agreement.

Q. Well, wasn't that letter talking about the extension that they were going to enter into, that they were going to expend 130,000 toward the purchase and installation of new pumps, canopy, console, signage, et cetera, needed for the resale of motor fuels?

A. Yes. But evidently they didn't sign a contract back in November. They may have changed other terms too.

Q. Let's look at the page that is SO 100. That's an agency agreement dated 2-13-90.

A. Okay.

Q. Do you see Paragraph 4 of that agreement?

A. Yes.

Q. And the price of the fuel of gasoline will be at all times under the absolute control of principal, right, except that the price shall be competitively priced with locations in that area?

A. Okay.

Q. Do you see that?

A. Yes.

Q. What locations did you view as competitive with the Laurel location?

A. Well, there's no other location in their trade

area that's a truck stop. Their location is unique for that area, but in that they sold gasoline, we would look at the closest competitors to their site, which would be Sunoco directly across from them. I think the next closest was Royal Farms and Exxon.

Q. Okay. So you'd recognize those locations as competitive locations?

A. Yes. Similar.

Again, none of them were the same. There weren't any other truck stops.

Q. Well, this location didn't just sell trucks, did it?

A. Well, based on the products that we sold to them, 75 percent of what we sold to them was truck diesel for the truck stop.

Q. They also sold gasoline for vehicles, didn't they?

A. Yes, sir.

Q. What else was at this location? You described a truck stop. Tell me what was there?

A. There were gasoline dispensers on the side of the building. There was a truck scale to the right of that. There were truck diesel pumps under another, second canopy behind the building.

There was a large convenience store with truck-related accessories, I guess you could say. There was a Hardee's restaurant, and I believe they had other -- they had like a cafeteria of some kind, some other type of restaurant in there also, in addition to selling regular convenience items.

Q. When you first took over the supply of that location, what was it branded?

A. It was branded Texaco.

Q. And then what happened with that?

A. Peninsula had a Texaco supply agreement through Motiva Enterprise. Motiva Enterprise was a joint venture between Shelby and Texaco, which later was, as part of Chevron's purchase of Texaco, was later ordered to be divested by Texaco, and Shelby Oil purchased Motiva and was no longer going to offer the Texaco brand. And I don't know what the exact cut-off date was, but there was a date in which all the locations had to be converted from Texaco to Shelby under that Motiva agreement.

We didn't have a Motiva agreement, and we approached the Glenns with the other choices that we had before we went out and obtained a Shelby agreement to rebrand their site from Texaco to Shelby, we offered

them BP and Exxon and all the other brands that we did have.

And the most interest they had was CITGO. I set up several meetings with Terry Sullivan, who was the local CITGO rep, and in addition to having meetings with just Sweet Oil reps and the Glenns, we also had meetings with Terry Sullivan from CITGO and the Glenns, and the decision was made on their part that they wanted to be CITGO. So it was converted to CITGO.

Q. But the contracts weren't modified at that time, or were they?

A. No. No, we were still under the existing '94 agreement.

Q. When you say that you sold to them the diesel fuel at the same price that you were selling at the Mobil location, is it your testimony that all of the diesel fuel sales to the Glenns were at rack plus a penny, plus freight, plus this freight administration cost?

A. And taxes.

Q. And taxes?

A. Yes.

Q. And was that true from the time you first started supplying them?

A. Yeah, I believe so. To the best of my knowledge.
Q. Did you have a, quote, posted price for diesel?
A. No, we didn't post our own rack. Peninsula may or may not have. I don't know. This agreement evidently says they did, but we didn't post our own price. We picked up product at the posted oil company's rack.
Q. Getting back to that, I asked you whether you remember a conversation with the Glenns in the fall of 2005, and I think you indicated there were a lot of conversations.
A. Yes.
Q. Do you remember ever telling them in any of those conversations that you would not abide by the contract and lose money?
A. I don't know that I ever said we would not abide by the contract. I would never make that statement. And it's not our intention to lose money intentionally. We wouldn't go into any business deal with the purpose of losing money. No business would.
Q. Did you make a statement to them in response to them pointing out to you the price term for diesel

in their contract that you wouldn't sell to them at that price and lose money?

A. There is no term for diesel. It's not in the contract. There is no price for diesel.

Q. Well, there is in the 1990 contract. Whether that contract is valid or it's not valid, the Glenns pointed out to you in a conversation, did they not, that their agreement with Peninsula Oil, that you assumed was that they would be supplied diesel at no more than rack plus two-and-a-half cents out of the Salisbury terminal?

MR. HUTCHISON: Objection.

THE WITNESS: We didn't sell to them at greater than two-and-a-half cents.

BY MR. STORM:

Q. You did when you added the freight?

A. It doesn't say that. The agreement doesn't say that.

Q. My question is, did they tell you that?

A. They told me a lot of things.

Q. Did they also tell you that they were entitled to payment of commissions for the gas of yours that they were selling for you?

A. Yes, that's in the agreement.

Q. And did you ever pay them commissions in September, October, November, or December of 2005?
A. I don't know if we did or not. I know we have existing commission credits on their account applied against monies that they owed us, and I know that they were taking commissions themselves as the agreement provides.
Q. And how do you know that?
A. Because they told me.
Q. Wasn't the money they were taking out of the payments that they were making to you the credit card fee amounts that were being inappropriately charged to them?
A. There were no credit card fees inappropriately taken from them.
Q. So your testimony is it isn't monies that they were withholding, for monies that they were paying to you did not relate to credit card fees?
A. If they withheld monies, they were not authorized to do so, for credit card fees.
Q. You agree, do you not, that they were not supposed to be paying credit card fees, at least on the gasoline?
A. On the gasoline, that's correct.

Q. You believe, do you not, Mr. Greco, that the applicable agreement with respect to the gasoline was this agreement dated March 16th, 1994, correct, starting at Page 108?

A. Yes.

Q. If you look at Page 2 of that agreement, Paragraph 5 at the top, it says, "Principal shall pay to agent no less than once a month on all motor fuel sales as dispensed through the equipment of the principal as follows:" And then it has the commission; right?

A. Yes.

Q. And you don't know whether you paid him anything or not in September, October, November, December?

A. I don't, because on numerous requests to produce journal tapes from the registers and other documentation so that we could reconcile their account, we got very spotty and incomplete information to reconcile their account. And to the best of our ability, we attempted to reconcile the account based on the gallons that we put in the tank, rather than what went through the dispenser, because that was something that we could document.

Q. Is it your testimony that they didn't submit weekly summaries to you?

A. They submitted paperwork that did not meet all the requirements that we needed.

Q. Did you ever discuss with them whether the paperwork they submitted to GLeS was the exact same paperwork they had been submitting to Peninsula Oil for the prior, at least, ten years?

A. We did have a conversation and they said that Peninsula, as a regular practice, was sending someone to their site to mechanically read numbers off of the pumps. And I don't know how they were doing their reconciliation based on that because the mechanical meters are inconsistent and tend to fail frequently.

Q. And the documents that you wanted them to submit to you were the Veedor root readings?

A. The Veedor root, the Ruby itself, the cash register Ruby produces a report, in addition to other documents that we asked them for.

Q. Look back at Exhibit 55. Can you identify that for me?

A. It's something they must have submitted to us. Handwritten numbers.

Q. If you look at Page 1053, is that the type of

document that you were looking for from them?

A. It's one of them. This specifically gives readings on what I believe were the diesel pumps, but not the gas pumps. The gas systems ran through the Ruby system out front and it prints a different type of report than this.

Q. On Page 1054 when it is talking about unleaded premium and mid, what is that showing us for product totals?

A. I don't know what machine this came off of, but this is incomplete.

What we requested was the journal tape from the Ruby system so we could validate all the sales.

Q. Well, you knew how much gas was being delivered to their location; right?

A. Yes.

Q. Because you were delivering it; right?

A. Yes.

Q. And presumably if you are making another delivery, right, they have sold the gas that you have just delivered before that; right?

A. You would think. You would hope.

Q. Look at 1056, that same exhibit.

Mark Greco

Which is a handwritten note that says "gas payment for week ending 9-27-05, less credit card fees charged by mistake from 9-12-05 to 9-17-05."

Do you see that?

A. Yes.

Q. When you were talking about monies that they were deducting, is that what you were referring to?

A. No.

Q. Who handled the bookkeeping at your shop for the Glenns' location?

A. We had four individuals in the accounting department. Each handled different functions. One handled accounts receivable, one accounts payable. Our controller was John McTear, who oversaw the accounting department.

Q. What are the names of the other people?

A. Andrea Soliday, Michelle LaBorde, Aaron Johnson.

Q. Is there somebody named Chad?

A. Chad was our dispatcher.

Q. Was Chad responsible for getting information too?

A. Sure, he made many calls requesting information, but he wasn't in the accounting

department.

Q. Who is responsible for setting retail prices on gasoline at this site?

A. My partner, Bill Sweet.

Q. And how did he do that, how was that handled?

A. On any given day, we look at what our cost is. We look at other competitive information that we can obtain either through Opus or for other brands that we supply. We look at surveys of street prices of competitive stations. We look at what our costs are related to the site. In this case we had a commission agreement, so that would be a factor. We look at any number of factors that affect our profitability at the location, and then we make an educated decision based on the information that we have.

Q. Was there any particular margin you were looking for from gasoline sales at this location?

A. No, not specifically. I mean in every location obviously you are in business to make money, so you try and remain on the profitable side of zero, but at the time that we took over this location, the first hurricane hit, I believe, two or three days prior to our takeover and the gasoline market was more volatile than I have ever seen in my 30 years in this

business and prices were changing hourly, let alone daily. And they weren't changing a penny at a time, they were changing 20 cents at a time.

And shortly thereafter, I believe maybe a month later, the second hurricane hit, and that contributed to allocation issues and overlifting penalties and extreme volatility in price on the street. And that took months to recover from.

Q. You wouldn't have expected the Glenns to continue to sell your gas without being paid the commissions that they were entitled to, would you?

A. No.

Q. Did you recognize that GLeS was responsible for maintaining the equipment at the site?

A. The gasoline equipment, yes.

Q. As opposed to what other equipment?

A. Well, because they were commissioned operators on the gasoline pumps, it was our responsibility to pay the cost related to the gasoline pumps.

Q. How about diesel?

A. No. They purchased fuel from us and then they in turn resold it to the public and they captured all the margins.

Q. Is diesel fuel considered motor fuel?

A. It is one of many types of motor fuel.
Q. And if you will look in the commissioned agency agreement at Paragraph 12, the one that you recognize as being the agreement -- it's at Page 110 -- Paragraph 12, second sentence says, "Motor fuel dispensing equipment shall at all times be maintained by principal."
Do you see that?
A. Yes.
Q. Did you do that?
A. I believe there's another statement somewhere in this contract that further qualifies that.
Q. In what way?
A. I believe it's in the loaned equipment agreement. I need to go through the agreement real quick.
On No. 114, equipment loan agreement, No. 2 refers to customer, which is defined up top as BCG, Incorporated, Laurel Oasis. "Maintenance customer shall maintain said equipment in good condition. In the event of partial or total destruction of all or any of the same, shall reimburse seller for damage to equipment or cost of replacement or restoring the equipment."

Q. So you took that to mean that you would be responsible for only the gasoline equipment?

A. It also goes on further in No. 6 and says, "Any and all additional equipment loaned or installed or placed for the use of the customer," and the diesel equipment was for the use of the customer, not for us. They were selling diesel product to their customers, not our customers. They were our customer.

Q. Right.

A. "Shall be deemed to be loaned upon the terms of this agreement," and going back above it said that loaned equipment was their responsibility to repair.

Q. And because you had inherited this customer from Peninsula --

A. Yes.

Q. -- did you go back to Peninsula and say, what was the deal here, what were you doing with the Glenns?

A. At some point I'm sure that I did, and the problem with Peninsula's records were a lot of things were either handwritten or John Willie, who is the current president, was not in any capacity of his father -- his father was -- and his father passed away from cancer shortly before. And either records were unavailable or they couldn't find them. I think they

said they had a flood, or something, and all their records were destroyed at one point. It was very, very difficult to get any information from them. So we were governed by the current contract, which we knew was very specific.

Q. And the commissioned agency agreement that you acknowledge as being an agreement that was in effect also seems to be very specific when it says that the motor fuel dispensing equipment shall at all times be maintained by principal?

A. Motor fuel could be aircraft fuel, it could be anything.

Q. Did you believe that GLeS was obligated to set retail prices at this location that would be competitive?

A. How do you define competitive?

Q. Well, I'm asking you whether you believe -- you have been in the business 30 years; right?

A. Obviously, any responsible marketer takes into account all the factors that are related to the sale and attempts to give the best price that they can on any given day.

Q. If a location is not competitively priced, the location is likely to lose volume, is it not? Is that

correct?

A. Yeah, yeah.

Q. And --

A. There's other factors that go into being competitive, though. There's competitive offerings. You asked me a question earlier about why do you put quick lubes and car washes and those type of things in. The purpose of being competitive is to offer as many possible services to your customer to give them reasons to come to your facility, and it's not all price. It's cleanliness and customer service and offerings and many, many different things that make you competitive.

Q. I'm glad you mentioned that. In connection with either of these locations, did you ever do appearance and cleanliness audits, inspections?

A. Yes.

Q. I haven't seen any of those, but I am assuming, and I have never seen any letters of default, that the locations in your mind were being properly maintained?

A. I have to go back in our records to find out, to pull the inspections.

Q. Were the inspections done on forms?

A. I believe that they were.

Q. Do you recall ever sending the Glenns any letter saying that the locations weren't meeting appearance and cleanliness standards?

A. I don't recall.

Q. If I told you that the first commission payment was made in January of 2006, do you have any reason to disagree with me on that?

A. I wouldn't know if that was the first payment or not. I know they were deducting their own payments. I couldn't tell you which months it was.

Q. And do you know whether after January of 2006 any more payments, commission payments were made?

A. I don't know that.

Q. You mentioned earlier, I think, that in your view the contracts were very specific; right?

A. Yes.

Q. Including this provision, it says, at Page 109, that principal shall pay to agent no less than once a month on all motor fuel sales as dispensed through the equipment as follows, and it sets forth the commissions.

A. Correct.

Q. Who was responsible at GLeS for assuring that the commissions were in fact being paid?

A. Our accounting department would have issued the commission payment had they received enough information in order to reconcile the account.

Q. And it's your testimony that if commissions weren't paid, it's because my clients weren't furnishing them enough information to pay the commissions?

A. That's correct.

Q. Was there any distinction between credit card processing that was done for Texaco and then CITGO credit cards at this location between diesel fuel purchases and gasoline purchases?

A. The Ruby system itself is capable of making that determination, distinguishing between the products.

Q. The credit card loan equipment agreement that's at Page 113 of that same exhibit, and this is a poor copy, and I think I have a more legible one if you need to look at it, with respect to the credit card terminal fee and transaction fee, there's an "NA." Do you see that?

A. Not really.

Q. Let me show you. We might have to make a copy of this. I will show you my copy and then we can get a

copy on the break.

A. Okay.

Q. Assuming this was the applicable agreement.

A. This is talking about leasing fees for any leased equipment. Credit card terminal and electronic printer.

Q. How about bank terminal access fees?

A. That's typical of, and having been a former Texaco rep, there was, I believe it was called -- I'm trying to think of the name of the company. But there were terminals that were capable of being leased on a monthly basis. If your Ruby system or G-cell or whatever pump controller that you had was not capable of processing, you could lease a piece of equipment from the credit card company. I don't know if it was VeriFone or Data Card -- I forget what the name of it was -- but they had machines that you could lease.

Q. Do you know whether under Peninsula Oil, whether my clients paid any credit card fees with respect to this site?

A. They told us that they didn't. I went back to Peninsula and they couldn't really tell us much of anything. They couldn't distinguish between gas and diesel. I don't know that they were sophisticated

enough to do it.

Q. And so your position was that fees would be charged on diesel and not on gas?

A. Yeah. The contract doesn't provide for them not to pay it, and they were paying it at their other location and every other dealer in this business everywhere is paying it. It's customary, it's part of the business. And where we were the dealer, quote unquote, in the gas operation, we paid the credit card fee related to the gas operation and they paid it for the diesel.

Q. Regardless of what had been the practice under the contracts that you stepped into?

A. I don't know what the practice was, but we followed the agreement.

Q. Show me in the agreements as you believe them to be where it says that?

A. It doesn't say that they don't pay it and it's customary for every dealer in this industry that they pay it.

Q. Except in their case it wasn't customary?

A. So they say.

Actually, in the agreement that you just pointed out to me on 113, while it says NA at the top,

there's a note that says, "Bank terminal fees. Expressed maintenance fees are subject to any changes that the bank or credit card company may make from time to time, if any."

I think -- it also talks about retailer agrees to be responsible to Peninsula for the performance of their employees using the automated system and handling credit cards and other further changes as may be made to the program from time to time.

Credit card fees change frequently. They were across the board, they used to be three percent of sales. Then they were some percent plus a transaction fee. They have changed. They have evolved, as you know, over the years.

Q. Did you ever point that out to my clients?

A. I don't know if I did or not.

Q. How were my clients making payments to you? Were they by check or by EFT transfers or how was it being done?

A. I believe they were initially on checks, and then they went on to EFT, and then they later went back on to checks.

Q. Why did they go back to checks?

A. I guess they felt they wanted to have better control.

Q. Let me direct your attention to Exhibit 56.

Can you identify that for me?

A. It appears to be a fax from Pat. I assume she worked for the Travel Plaza. To our office.

Q. Do you know what these are showing, these faxes are showing?

A. This, again, looks like a report off of the Tokheim diesel console.

Q. Do you know why these would have been faxed to your office?

A. The second page is a credit card settlement from CITGO. So is the third page and the fourth page. I don't know. This is incomplete.

Q. Credit card settlements, how were those handled?

A. It shows, the third page in at the top shows a breakdown of products. Gallons and dollars. It breaks out what credit cards were processed for unleaded, premium, diesel, mid-grade, and so on.

Q. Do you know why these were being faxed?

A. It was probably one of the reports that we requested them to fax to us.

Q. Tell me what 57 shows.
A. 57.
I'm not sure.
Q. This is an accounting report of yours, is it not?
A. Yes, it is, but I'm not an accountant.
Q. It is showing deposits, correct, or it appears to be?
A. It appears to be.
Q. Deposits that were coming from Laurel Oasis to CITGO?
A. It's possible that that's what that is. I don't know.
Q. How about 58, do you recognize that exhibit?
A. Yes, it appears that dispatcher was responding to Shelly Domingo. She must have made a request for him to send information.
Q. And when he says to her that I have been receiving your messages regarding the retail gasoline prices and I cannot personally, do not have the authority to determine what gas price should be posted at station. I have been passing your notes on to appropriate staff. They have met with the owners of Laurel Oasis regarding this issue. If you have any

questions.
A. Yes. He is our dispatcher and does not have pressing authority. All he would do is take the message.
Q. Do you know whether Shelly was transmitting complaints from time to time about the retail prices at the station?
A. Well, it's typical in this business you only hear from someone when they are not happy, but when they are happy you don't hear from them. So this is an example of one incident.
Q. Exhibit 59, this was, I guess, the letter that was sent out to the customers of Peninsula announcing that they were going to be transferring their business to you; right?
A. Yes.
Q. Exhibit 60, that's Chad supplying Shelly the form that he wants her to fill out to send prices, right, and reconciliations?
A. Yes.
Q. Showing purchases and inventory, beginning and ending inventory would show sales, would it not?
A. Well, it would show variance. Sales is up at the top. Sales is the very first line at the very top.

Q. Was this the form that they wanted to -- well, saying we need the top portion sales and retail price, including competition, completed; right?

A. I think he was attempting to address her concern about competitive pricing, so he asked her to make sure to send this information every day with sales and these specific competitors' prices every day.

Q. 61, tell me what that is?

A. It appears to be a breakdown of credit card receipts. Based on the credit card settlement, it must have identified what type of products made up the credit card settlement.

Q. Do you know whether that included credit card fees or not?

A. I don't.

Q. How about the pages starting at 1015.

A. This looks like an activity report, credit cards we received and credit cards we paid.

Q. How about Page 1019, what is that?

A. It's a spreadsheet prepared by someone in an attempt to establish commissions.

Q. Page 1020, what's that?

A. Some kind of internal accounting report. That has to be incomplete.

Q. Why is that?

A. Because it appears from a one-month period of time we made $17,000 when the entire duration of -- I don't know how many months it was -- but over the entire duration, that this is probably half of the income that we made the whole time we were there.

Q. You made pretty big margins as a result of the hurricanes, did you not?

A. It's very possible. Price was very volatile during that time.

If this is accurate, which I don't know that it is, but if it is, then there must have been other months that offset this income with losses.

Q. Would there be statements like this for the other months for my clients' locations?

A. By month? We actually produced as part of Exhibit 75, we produced the entire duration of time.

Q. I think that was the only period that there was one of those for that had been produced. I will just add that to my list. If you think you have them for the other periods.

How about Exhibit 62?

A. It is from Pat to our office. It appears to be an attempt to reconcile commissions.

Mark Greco

Q. And this is suggesting there was a commission due from September 1st to November 29th; right?
A. That's what it says.
Q. How about Exhibit 63?
A. It appears to be an attempt to get their account caught up on any past due commissions with someone's comment on it that there's a difference of $768. I guess between our accounting department and their accounting department they still didn't agree on the number.
Q. You don't know for sure what this is; right? Is this a Sweet Oil-generated document?
A. It appears that it is, yes. At least some of it. The first page is a check stub. The second page I don't believe is a Sweet Oil document.
The third one looks like it is a Sweet Oil document. The fourth one isn't. It is a mishmash of different documents here.
Q. How about 64?
It seems to be an e-mail from you to Bill Glenn dated December 27th, 2005.
A. Yes. This was during the time that we were talking about terminating the existing agreements and we had offered them the opportunity to become

distributors of their own, and that's what this is.

Q. Exhibit 65 is a letter dated March 15th, is it not?

A. Yes.

Q. And this was telling you you are no longer authorized to EFT monies from their account; correct?

A. Yes.

Q. And then it also says, "Per our account, agent shall pay to principal net ten days from billing the sums received from the sale of gasoline and agent will pay for diesel fuel ten days from billing date."

And that was referring back to contract language; right?

A. Okay.

Q. And you then received another letter from my clients, did you not, dated July 11th, 2006? It is Exhibit 66, which I think you have already identified; right?

A. Yes.

Q. And I think we have talked about Exhibit 67, or maybe not. Exhibit 67 is your response, is it not?

A. Yes.

Q. In Paragraph 3, you state that, starting at the top of Page 2, "your contract" -- and I'm in the

fourth line down -- "Your contract states, you will purchase all gasoline at 'retail posted price less commission' and diesel fuel at 'our posted full transport price' at time of delivery. There's a footnote which states 'not to exceed Salisbury rack prices by more than two-and-a-half cents per gallon.'"

And then you say, "In fact, we have been charging you Salisbury rack price plus only one cent per gallon, which means we have the right to charge you more than we have been charging you in the past."

Do you see that?

A. Yes.

Q. The asterisk footnote was in the 1990 contract, was it not?

A. Yeah. I must have been incorrectly quoting this. I must have looked at the 1990 agreement, which they had furnished me later.

I don't know. Maybe it was attached to his letter. Maybe that's why I was reading from that.

Q. Then you say in Paragraph 5 that in the second sentence, "In fact, we paid you for the period of September 2005 through January 2006 based on our best estimate of what we believe due to you since you have refused to provide us with the daily sales reports,

which are VeriFone Ruby equipment, loaned equipment, provides."

Do you see that?

A. That's correct.

Q. In fact, the payment that you made in January of 2006 was exactly the amount that the Glenns told you was owed, was it not?

A. No, it wasn't, because the fax that you just, we just went over a minute ago said there was a difference. Exhibit 63.

Q. And is it your testimony that there was not a later communication that told you what amount was owed and the amount that was ultimately deposited into their account?

A. Again, I'm not an accountant and I didn't work in the accounting department, but based on five minutes ago when we went over that last exhibit, it showed that there was still a variance.

Q. Which exhibit?

A. 63, I think it was.

Q. 63, I think, was the document I think you said you couldn't identify everything that was in that exhibit; right?

A. I couldn't tell you who generated each of

these reports. But it appears to be an attempt to reconcile commissions due.

Q. You knew based on the Glenns' letter to you of July 11th that they deemed the contract terminated; correct?

A. They felt that they had the right to unilaterally terminate, which they didn't have that right.

Q. Well, they did terminate it, though, did they not?

A. They believed they did. We don't recognize it as terminated.

Q. They didn't buy any more gas from you; right?

A. No.

Q. They didn't buy any more diesel from you; right?

A. No.

Q. And then you sent a letter dated July 19th, which is Exhibit 68, did you not?

A. I did not.

Q. Mr. LeRoy did?

A. Yes.

Q. And he sent that to, I assume, all the people who are copied on the letter?

Mark Greco

A. Yes, correct.

Q. And the purpose of that letter was to discourage anybody else from selling fuel to my clients, isn't that right?

A. It was to enforce our rights under our contract.

Q. And you advised them that Sweet Oil has initiated legal action to enjoin any company from selling and/or transporting any motor fuel.

Do you see that?

A. Yes.

Q. And in fact, you had not initiated any legal action, had you?

A. I don't know if anything was filed with the court, but we were talking to the attorneys about it at that time.

Q. And then you say, "Said legal action may include a lawsuit seeking an injunction"; right? You didn't do that, did you?

A. We are here. I don't know what --

Q. You didn't seek an injunction, did you?

A. No, we didn't.

Q. And in fact, my client sued you, didn't they?

A. And we countersued.

Mark Greco

Q. And in fact, by July you were heavily into negotiations with GPM by that point, were you not?
A. I don't know what the term heavily, but we were in discussions with them, yes.
Q. But it was your intention in sending this letter to discourage others from dealing with my clients?
A. Absolutely.
Q. Because you knew if you sent this letter to enough people and they couldn't buy gas from anybody, that they'd have to come back to you?
A. No. We were trying to enforce our rights under the agreement and we were notifying other innocent distributors of our legal contractual rights so that they didn't put themselves into a position of jeopardy.
Q. Well, if you were trying to enforce your rights under the agreement, you would have filed a lawsuit, right, either seeking damages or seeking to prevent my clients from terminating the contract?
A. Is that a question?
Q. Yes.
A. We eventually did and we are here.
Q. You filed a counterclaim months later after we

sued you?

A. Yes. I don't know what the exact timing of it was.

Q. Did anybody call you in response to that letter, any of these suppliers?

A. It's possible they did at the time. I don't know.

Q. Had you ever received a letter like this from somebody else?

A. Yes.

Q. You had?

A. Yes.

Q. And who had you received a letter like this from?

A. I don't remember exactly who it was. I think there was an incident in Philadelphia at some point that a distributor sent us to put not just us, but to put all distributors who were authorized to deliver in the area on notice that one of their customers was attempting to make a unilateral breach of their agreements.

Q. And when you got that letter, you wouldn't supply that party; right?

A. Absolutely not.

Q. So you knew it was likely that if you sent this letter to all these other parties that it was unlikely that they would want to do business with my client, because the last thing they would want to do was get involved in a lawsuit?

A. Correct.

Q. And you were, through this letter, essentially notifying them that if they supplied my client, that they would be interfering with this contract that you had with my client; right?

A. That's correct.

Q. Except that my client had terminated that contract; right?

A. They didn't have the ability to terminate the agreement.

Q. Well, they sent you a letter that said it was terminated; right?

A. So they -- it was their wish to terminate, I guess, but they did not have the right to terminate.

Q. After that letter was sent, you never did business with them again at that location, did you?

A. No. We continued to do business with them at the Delmar location.

Q. Under separate contract; right?

A. Under separate contract. And it was our hopes that we wouldn't have to go to litigation. We were continuing to supply them at another site.
Q. My client responded to your letter by sending you Exhibit 69, did it not?
A. Exhibit 69 is the EFT letter.
Q. I'm sorry. It got copied wrong. It should be a letter dated July 20th.
A. That says 69.
Q. What's the next one?
A. 70 is --
Q. Dated July 20th?
A. A letter dated July 20?
MR. STORM: Everybody take sticker 69 and put it on 70 and put 70 on 69.
MR. HUTCHISON: Just to keep the record straight, 69 is 65. So it's already a marked document.
MR. STORM: I will change mine. 69, these got mixed up when they were copied, it looks like. Everybody's appears to be right but mine.
So your 69 is the same as 65?
MR. HUTCHISON: Yes. It is a March 15th letter.
MR. STORM: So March 15th, mark that 69,

but it is a duplicate of 65. And Exhibit 70, then, should be a letter dated July 20th.

BY MR. STORM:

Q. Right? Do you have that there, Mr. Greco?

A. Yes, I have the letter dated July 20th.

Q. And that was in response to your letter of July 11th; correct?

A. It's referencing past agreements. It doesn't reference the current agreement. It references the 1990 agreement.

Q. The body of the letter says, "We are in receipt of your letter dated July 11th, 2006"; right?

A. Yes.

Q. And that was the letter we were just talking about; correct?

A. Yes.

Q. Your letter of July 11th was your response to my client's letter, which was your letter that was Plaintiffs' Exhibit 67.

A. Okay.

Q. You got that letter from my clients, didn't you?

A. I believe we did.

Q. How about 71, do you recognize that?

Mark Greco

A. This is something that dates back to March.
Q. Do you recognize it?
A. I recognize it as a memo from my office. I didn't generate this.
Q. I understand.
When it is talking about Coraluzzo has revised your transportation rate for diesel from .0202 to .0209, how would that have been done by Coraluzzo?
A. I don't understand the question.
Q. It says Coraluzzo has revised your transportation rate. Would Coraluzzo have notified you that your rate was going up for deliveries to this location?
A. They probably notified us that it was going up to all locations and we sent out a memo like this probably to every single location.
Q. How was it determined that the rate was .0202 for this location?
A. When they priced for us, they would price it out by site. Again, as I said before, the price to each location was unique based on miles and tolls and many other factors.
Q. And was there something from Coraluzzo that told you that, what the prize was to each location?

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A. There probably was.
Q. And what would that have been, a summary sheet of some kind?
A. Well, it would have been by location or by city, most likely. From terminal to a city.
Q. So each location's freight rate varied?
A. Yes.
Q. From Coraluzzo?
A. Yes.
Q. Let me ask you about Exhibit 72. Do you recognize these documents?
A. Yes.
Q. And what are they?
A. They are documents that Laurel Oasis must have sent to us either by fax or mail.
Q. And this is telling you what the competitors' prices are, right, retail prices?
A. It was intended to do that, yes.
Q. And when you look at these and receive these, how did you make a determination what retail price to set on gasoline at Laurel Oasis?
A. We couldn't make that determination just on this information. First off, this information was proven to be inaccurate. There were many occasions

when we would send our sales rep by, either we would not receive this information or it would be inaccurate, and we would ask someone to go by there and validate. And the numbers that were on here were inaccurate.

There were other times that they just wouldn't give it to us at all, and I don't know if these, this particular sampling is complete or incomplete.

Q. This is just a sample. I picked out a sample of these documents so that we could establish that you were receiving documents like this.

A. It is incomplete. And the closest competitor to their location doesn't have any prices.

Q. Which was what?

A. The Sunoco.

Q. On what, one of the pages you are looking at?

A. On any of the pages that I see here. It appears that they crossed Sunoco out.

Q. Was Sunoco a full service location?

A. It may have been.

Q. And were there prices posted for full serve?

A. I don't know off the top of my head.

Q. If you look at Page 0618, Shelly Domingo frequently wrote notes like that, did she not?

A. It's very possible. I didn't receive these reports.
Q. And when she would write, "As per our contract, the price shall be competitively priced with locations in that area, can we please get closer to our competitors' prices," would somebody in your office bring that to your attention?
A. It's very possible that they may have, but in the current agreement it doesn't say anything to that effect. Now, it is our intention to be as competitive as possible, but there's nothing that says specifically that we need to be, quote, competitive, and there's nothing that defines competitive as a specific range or anything else.
Q. And on the same exhibit, Page 640, if she writes, "Per our contract it states we must be competitive! Are we going to price our gasoline competitive or not? These prices have been 10 to 20 cents higher for the last eight months," did anybody write to her and say, that's not in your contract?
A. I don't know that anyone would discuss the contract with her. She's not on the contract.
And on the particular day she wrote that we were 10 to 20 cents higher, according to the

information that she provided, we weren't 10 to 20 cents higher.

Q. Let me ask you about 74. I think you mentioned earlier that you got documents from Peninsula that related to the incentive monies that had been paid to Peninsula prior to your taking over the contract. Is that what these documents are?

A. Yes, it appears that's what this is.

MR. STORM: Let's take about five minutes. I think I am about finished.

(P-77 was marked for identification.)

BY MR. STORM:

Q. Let's look at Exhibit 77. Are you able to identify that document?

A. It's a bank statement from Bank of Delmarva. It doesn't have the name of the account holder on it.

Q. GLeS, Inc., there is an entry you will see on January 17th in the amount of 5,506.08, do you see that?

A. Yes.

Q. If you look back, Mr. Greco, at Exhibit 62, which was the fax from Pat at my client's office to Sweet Oil dated December 9th, 2005, that stated the commission due was 5,506.08, do you see that?

A. Yes.
Q. The same amount?
A. Yes.
MR. STORM: I think those are all the questions I have.
BY MR. YOUNG:
Q. Put P-2 in front of you.
Mr. Storm asked you some questions about this document and I have a few more.
Do you know who drafted this agreement?
A. No, I don't.
Q. At the bottom it has what appears to be a word processing label, do you see that "C:/"?
A. Yes.
Q. At the end it says "SweetOil.doc." Does that refresh your recollection or give you any indication as to whether Sweet Oil may have drafted this?
A. We did not draft this.
Q. Do you know whether Sunoco drafted it?
A. Yes. I can go back in my e-mails and find out. I don't know if it is in here or if it is in other discovery. But it was e-mailed to me and we printed it and signed it and then sent it back to Dolores.

Q. And do you think it was Dolores who sent it to you?
A. She would have sent it, but I don't know who would have drafted it.
Q. The reason I ask --
A. It actually says Sunoco Engineering at the top.
Q. That appears to be a fax. Let me ask this question: Do you know why there's not a signature line typed into the document for Sunoco on the last page that's marked SO 73?
A. If there's not a signature line, I have no idea. It appears that Jeff Byard handwrote it in.
Q. That's my question, I was wondering why it wasn't typed in?
A. I don't know. I don't know who generated this document.
Q. Paragraph 7 states, "Assignee acknowledges -- and the assignee is you, Sweet Oil -- "acknowledges that two currently branded Mobil retail sites are subject to a certain Tosco distributor image incentive program agreement as follows:
"Duck-In #2, 5610 Market Street, Snow Hill, Maryland, unamortized balance as of 6/30/05

$14,270, full amortization 3-31-11."

Did I read that part of Paragraph 7 correctly?

A. Yes.

Q. And then a subpart of Paragraph 7, which is entitled B, says, "Delmar Mobil, 9521 Ocean Highway, Delmar, Maryland. Unamortized balance as of 6-30-05, $112,077. Full amortization 7/31/12. Incentive three cents per gallon to be paid through July 31, 2006."

Did I read that part of Paragraph 7 correctly?

A. Yes.

Q. The Delmar Mobil Tosco distributor image incentive program, if you would turn to Plaintiffs' Exhibit 6. Is what has been marked as Plaintiffs' Exhibit 6 what Paragraph 7 B of the assignment and assumption agreement is referring to?

A. Yes, it appears to be.

Q. In Subparagraph A, it's referring to Duck-In #2.

MR. YOUNG: Why don't we mark this as 78.

(Exhibit 78 was marked for identification.)

MR. YOUNG: For the record, we will mark

as Exhibit 78 a two-page document which is entitled Tosco Distributor Image Incentive Program Agreement Mid-Atlantic.

BY MR. YOUNG:

Q. I hand this to the witness. It is the Duck-In #2 Tosco Distributor Image Incentive Program Agreement.

Have you had an opportunity to review what we have marked as Exhibit 78, Mr. Greco?

A. Yes.

Q. Is that agreement that you have and is marked 78, is that what is referred to in Paragraph 7 A as the Duck-In #2 Tosco Distributor Image Incentive Program?

A. I believe it is.

Q. When you signed this agreement in September, August or September 2005, you understood based upon Paragraph 3 that it was Sunoco's intention to convert the Duck-In #2 Mobil and the Delmar Mobil to the Sunoco brand; correct?

A. Yes.

Q. What was your understanding as to what would happen to the two agreements that are referenced in Paragraph 7 once there was the conversion of those stations from a Mobil branded station to a Sunoco branded station?

A. The way I understood it was that these would continue to amortize for the remainder of whatever duration was left, or they were actually given an opportunity to extend their term and they were offered another additional incentive over and above this incentive.

Q. Where did you get that understanding from?

A. It came from Dolores in the offering package that she sent to us.

Q. Dolores Love at Sunoco?

A. Yes.

Q. So you understand that there were balances due on these agreements?

MR. HUTCHISON: Objection.

BY MR. YOUNG:

Q. You can answer. Well, I will be more specific. In Paragraph 7 A, there's an unamortized balance as of June 30th, 2005 of $14,270; correct?

A. Yes.

Q. Was it your understanding that if that agreement terminated on June 30th, 2005, that there would be a penalty of $14,270 to be paid?

MR. HUTCHISON: Objection.

THE WITNESS: On face value, yes.

However, Sunoco, in one of the correspondences, had agreed that they were going to waive the Duck-In location amortization.

BY MR. YOUNG:

Q. Was it your understanding that as of June 30th, 2005, with regards to the Delmar Mobil, that if that agreement terminated on that date, there would be $112,077?

MR. HUTCHISON: Objection.

THE WITNESS: Yes.

BY MR. YOUNG:

Q. But it was your understanding that if these retail locations continued to purchase motor fuel through you and through Sunoco, the purchases would amortize this balance to zero by the dates that are reflecting at 7 A and 7 B?

MR. HUTCHISON: Objection.

THE WITNESS: Yes.

BY MR. YOUNG:

Q. Now, Dolores Love, you testified Dolores Love told you that Sunoco would honor these agreements even for Sunoco fuel; correct? Let me rephrase that. That was a bad question.

You understood from Dolores Love that

Sunoco was willing to amortize these balances going forward based on purchases of Sunoco motor fuel; correct?

A. Based on Sunoco fuel, yes.

Q. But if these two retail locations did not become Sunoco's and, say, went to another brand, was it your understanding when you signed this agreement that this unamortized balance would have to be paid --

MR. HUTCHISON: Objection.

BY MR. YOUNG:

Q. -- whatever that balance was at the time?

A. Yes, I believe so.

Q. Paragraph 3 of this agreement --

A. Which agreement?

Q. Plaintiffs' Exhibit 2.

A. Okay.

Q. It says, "Assignee agrees that the locations supplied Mobil brand Mobil fuel under the expiring agreement will be rebranded Sunoco promptly in accordance with a schedule."

Does rebranding in your mind mean converting from Mobil to Sunoco?

MR. HUTCHISON: Objection.

THE WITNESS: Yes, it contemplates change

of brand from Mobil to Sunoco.
BY MR. YOUNG:
Q. As of the time you signed this agreement, that's what you understood would happen; correct?
MR. HUTCHISON: Objection.
THE WITNESS: Yes.
BY MR. YOUNG:
Q. We talked about this EOL for Mobil or end of life --
A. Yes.
Q. -- and I think you testified it was based on a tandem platform that some Mobil branded locations had?
A. The way it was explained to me, I don't think it was from Dolores. One of the e-mails would have the name of the Sunoco engineer, whoever it was, that explained it to us, but that of the three Mobil sites that we were supplying, the Doughboy's location was the only one that was not compatible with this change, and that required some change to be made to the equipment or to the software or whatever it was.
Q. And that was a compatibility with something that Mobil had or ExxonMobil had?
A. I don't know if it was with ExxonMobil merging their two tandems, or I don't know who all this -- I'm

not an engineer.

I know that there was a requirement, and Exxon sent the initial letters and then we got contact from Sunoco saying that this needed to be done for them to continue. And based on the conversion schedule and the end of life of their particular location, first they lost the ability to accept debit cards. Then they lost the ability to accept Speedpass. And then eventually they lost the ability to process any credit.

Q. And what did they need to do in order to be able to maintain their ability to accept debit cards, Mobil credit cards and any credit card?

A. Well, we went to Vernon, as it stated in one of these exhibits, we went to Vernon of JCV, who is right in Salisbury near the location, a large pump and tank repair contractor, and asked him what was necessary. He was very familiar with all their equipment, and he told us it was approximately $4,500 to do whatever work was necessary. And I don't know specific, if it was hardware, software, but he gave us a ballpark of approximately 4500 to make that change.

Q. And who was going to have to pay that money?

A. The dealer.

Q. I think you mentioned under Mr. Storm's

questions that if the dealer agreed to convert to Sunoco, that that was an expense Sunoco was going to bear?

A. Not that cost. The eventual cost of changing from that platform to Sunoco's network.

Q. The platform that the dealer had when you took over the Delmar Mobil supply agreement, was that an equipment that the dealer owned?

A. Yes.

Q. And is that why it was their responsibility to purchase?

A. Yes.

Q. The next platform?

A. Yes. It's required in their supply agreement.

Q. The EOL issue with ExxonMobil as you have described it, was that peculiar just to Mobil stations in the Mid-Atlantic area that were converted to Sunoco stations, or was that, to your knowledge, nationwide?

A. The way it was explained to us was it was a complete network issue. It wasn't specific to a state or a site. It was their entire network was being changed in some fashion.

Q. So it wasn't particular to Sunoco's conversion of Mobil stations, to your knowledge?

A. No, I don't believe so.
Q. In June of 2006, you received an e-mail, and it was shown to you -- if you need to refresh, we will go to it -- but hopefully we won't need to -- from Dolores Love telling you that the Delmar Mobil was in breach of the agreement.
Do you remember that?
A. Yes.
Q. Why were they in breach of the agreement in June of 2006?
MR. HUTCHISON: Objection.
THE WITNESS: Because as part of being branded Mobil, there was an implied, I guess -- I don't know how to say it. Let me think about it for a minute.
MR. STORM: I will add my objection to this as well.
THE WITNESS: Okay.
BY MR. YOUNG:
Q. You can continue.
A. There is an expectation of a Mobil credit card or Speedpass holder that if they go to a Mobil branded site with the Mobil sign and Mobil identification and marks, that their Mobil credit card could be accepted.

And the fact that they no longer accepted Mobil credit cards at the Mobil site was viewed as a breach of the Mobil agreement.

Q. Did you also have that understanding in June of 2006?

A. Yes.

MR. HUTCHISON: Objection.

BY MR. YOUNG:

Q. And what could the Delmar Mobil or I'll refer to them as the entity that operates as BCG, Inc., or Chesapeake Products & Services, do to remedy what you and Sunoco perceived to be a breach?

A. Had they made the investment, whether it be through JCV or any other contractor of their choice, they had an obligation to make that necessary agreement to continue to accept.

For approximately $4,500, they have a huge investment in the site and they actually, in some of their correspondences that we went through today, said that it took them four years to build the brand. And part of the reason that they chose that brand was the brand recognition of the customer and the Speedpass and all those other things. And for $4,000 they just alienated a large segment of those Mobil customers who

they were targeting, who they were hoping to make their customers.

Q. To your knowledge, did Delmar Mobil ever remedy the breach that you and Sunoco perceived?

A. No.

Q. In that e-mail or maybe another one, Doris Love also tells you that they are not only breached, but you cannot supply them Mobil branded product and they need to de-identify the station.

Do you remember that?

A. Yes.

Q. Did they ever de-identify the station at any time in the year 2006?

A. Off the top of my head, I don't know the date it was debranded, but we sold them Mobil product up until the time that the Mobil signs came down.

Q. Why did you continue to sell them Mobil product until the -- let me back up a second before I get to that question.

Do you know why the location wasn't de-identified or debranded between the time you got that e-mail from Dolores Love and the time it eventually was de-identified or debranded, which I believe based on the documents we have seen today, was

January of 2007?

A. Yeah. I believe that we were still attempting to resolve the issue, and through the additional incentives that Dolores had offered, we were hoping that we were going to be able to convince the dealers to go to Sunoco. And we didn't want to sell them anything other than Mobil while the Mobil sign was being displayed.

Q. Did you ever tell Charlie or Billy Glenn that they were in breach of their agreement for not having purchased that equipment?

A. Yes, verbally and in writing.

Q. Did you tell them in June of 2006, after you received Dolores' e-mail, that they needed to de-identify the station?

A. I think we actually did it. I think that we contacted them -- I think we sent them a written correspondence, but we actually had Adam Gray, who was our sales rep, call them in person first because we didn't want to send a contractor down there to take the signs down and have them tell the contractor to leave. So we verbally contacted them first the day prior to, and then they allowed our contractors to come out and de-identify.

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Q. And you are talking about the time they eventually de-identified in January of 2007?

A. Yes. And we did it at our expense. We sent our own contractors down to do it.

Q. I guess my question was a little different. I was asking back in the summer of 2006 when Dolores Love first informed you that Sunoco considered the retail facility to be in breach and they were no longer able to accept Mobil credit cards and told you that the station should be de-identified, at that time, did you take any steps to try to de-identify the station?

A. No, it wasn't an evolving process over a very long period of time . We talked about it for months and I think it was they are going to have to de-identify or we are going to have to do this, but there never really was a specific date, it had to be done by a certain date until it actually happened.

Q. But at the time that they eventually did de-identify, did you consider Delmar Mobil to still be in breach of the Mobil agreement because of their failure to purchase that equipment?

MR. HUTCHISON: Objection.

THE WITNESS: Can you say it one more time? I just want to be clear.

Mark Greco

BY MR. YOUNG:

Q. Did the retail facility known as the Delmar Mobil ever remedy the breach that you and Sunoco identified as having occurred in June of 2006?

MR. HUTCHISON: Objection.

THE WITNESS: No.

BY MR. YOUNG:

Q. So on the day that the Mobil station, the Delmar Mobil was de-identified in January 2007, you considered them to still be in breach of the credit card provision of the Mobil agreement?

A. Yes.

MR. STORM: Objection.

MR. HUTCHISON: Objection.

BY MR. YOUNG:

Q. Under Mr. Storm's questioning, you described some of the conversations you had with the Glenns about the alternatives.

A. Uh-huh.

Q. One of which was that you could supply them motor fuel through a different brand; correct?

A. Yes.

Q. And that might have been BP. I think we even saw an e-mail from Dolores Love indicating that she

thought you would offer them BP?

A. Yes.

Q. And if they chose to go to another brand, even though it was supplied by Sweet Oil, was it your understanding that the penalty due under the incentive agreement would still have to be paid?

MR. HUTCHISON: Objection.

THE WITNESS: Yes.

BY MR. YOUNG:

Q. And that's because that change of brand would be considered a debrand under the incentive agreement?

MR. HUTCHISON: Objection.

THE WITNESS: Yes.

BY MR. YOUNG:

Q. What's your definition of the word, what do you understand the word debrand to mean?

MR. HUTCHISON: Objection.

THE WITNESS: Removal of anything on the property that has the name, any trademarks, any proprietary product names or specific colors. Any identification signs or marks that relate to the franchise.

BY MR. YOUNG:

Q. Would de-identifying the station be the same,

in your mind, as debranding the station?
A. Yes.
MR. HUTCHISON: Objection.
BY MR. YOUNG:
Q. And rebranding would just be de-identifying or debranding and then putting in another brand, is that fair to say?
A. Yes.
Q. Can you take a look at Plaintiffs' Exhibit 65.
A. Okay.
Q. This is a letter to you from Charlie Glenn dated March 15, 2006?
A. Yes.
Q. And it is telling you that you are no longer authorized to EFT sweep any monies from any of plaintiffs' checking accounts pertaining to the Laurel, Delaware station; correct?
A. Yes.
Q. Did you ever send a letter like this to Sunoco at any time?
A. I don't believe so.
Q. Did you ever tell Sunoco at any time that it was no longer authorized to EFT sweep any of your bank accounts?

A. I don't know if we did or not.
Q. If you wanted to find out, what would you do to find out?
A. I don't know if I could now. At the time, if we were still in operation, I would go to our controller, who ran the accounting department.
Q. Who was that?
A. John McTear.
Q. But you personally don't have a recollection of having told Dolores Love or Dan Moore or Jeff Byard?
A. No, I don't believe so.
Q. Why did the Duck-In Mobil not convert to Sunoco?
A. We actually offered them Sunoco and they were going to go Sunoco. And the problem was that if the Doughboy's location did not convert to Sunoco, we didn't meet the minimum volume requirement, so we actually had to go back to Duck-In and convince them to do something else.
Q. It was your understanding that the way these stations would be converted would be that because you already had an existing Sunoco distributor branded motor fuel agreement, that the conversion to the Sunoco station would essentially mean that you and Sunoco

would continue under the Sunoco distributor agreement and not the assigned Peninsula agreement; correct?

MR. HUTCHISON: Objection.

THE WITNESS: The Tosco Peninsula agreement had expired. The only agreement we actually had was the Sunoco agreement.

BY MR. YOUNG:

Q. How were you able to sell Mobil branded product to Delmar Mobil up through January of 2007?

A. The way it was explained to us was that there was -- they contemplated some rider, which I don't know that we ever signed, but it was going to transfer the Mobil gallons to our Sunoco jobber agreement until they were converted to Sunoco.

Q. Was it your understanding that the Peninsula agreement was extended on a month-to-month basis after September 30th, 2005?

A. No.

Q. Did Sunoco ever tell you that that agreement had expired and Sunoco was no longer honoring it?

A. At the time that we were negotiating to buy Peninsula's business, they were given notice by Sunoco that it was not going to be renewed again and they were trying to, I believe they were trying to get Peninsula

to go to a Sunoco agreement. And at the time we came into the picture, I guess they backed off pressure on Peninsula because we had an existing Sunoco agreement already. And I think that that was the end result that they were hoping to gain anyway, was to have a Sunoco agreement in place.

Q. But it's your understanding that you had the right to purchase Mobil branded fuel from Sunoco from October 1st, 2005, up until February of 2007?

A. Through our Sunoco agreement, yes.

Q. And it's your understanding that that right derived through the Sunoco distributed branded motor fuel agreement?

A. Yes.

Q. The one dated March 21st, 2003?

A. I believe so.

Q. And where did you get that understanding?

A. That's the way it was explained to me at the time we were doing the assignment, that we were going to have assignment of Peninsula's agreement until it expired on the 30th of September, 2005, at which time there was supposed to be an amendment created that would transfer those gallons to our Sunoco agreement.

Q. Did you ever see such an amendment?

A. To the best of my knowledge, it was never issued. It was never signed. But that's how the process was explained to me.
Q. Who explained that process to you?
A. It would have been Dolores Love.
Q. Anybody else?
A. I don't believe so, but it's three years ago. I'm not sure.
Q. Did you ever sign a mutual cancellation agreement of the Mobil branded distributor agreement?
A. No. It just expired.
Q. Would you look at Exhibit 44.
You just explained to me your understanding as of the time you signed the assignment and assumption agreement in August or September of 2005 when the process was going to take place. I would like you to take a look at Plaintiffs' Exhibit 44, which is Mr. Byard's letter dated November 2nd, 2006.
A. Yes.
Q. In this letter, is it fair to say that the Re line says Nonrenewal of Mobil Branded Distributor Agreement?
Did I read that correctly?
A. That's what it says.

Q. That's a reference, is it not, to the Mobil agreement that was assigned to you by Peninsula; correct?

A. I don't know if I took it to mean that specific agreement or the successor to that agreement, which allowed us to continue to supply Mobil.

Q. What is the successor -- before I ask you that question, would you read the first sentence of that letter?

A. Okay.

Q. It references the Mobil branded distributor agreement dated September 18th, 2000, between Peninsula Oil and Tosco Refining LP, which agreement was assigned to Sunoco by ConocoPhillips on or about April 28th, 2004, and was assigned to you by Peninsula on or about September 15th, 2005.

Did I read that correctly?

A. Yes.

Q. Isn't that the agreement, the Mobil agreement, isn't he referring to the Mobil agreement that was assigned to you by Peninsula on September 15th, 2005?

A. I believe it is, yes.

Q. And then he goes on to state in the next sentence, "This agreement by its terms expired

September 30, 2005, and has been extended on a month-to-month basis since then."

Did I read that correctly?

A. Yes, you read it correctly.

Q. Was that your understanding of what occurred?

A. No.

Q. After you signed the assignment and assumption agreement with Peninsula and on or about September 15th, 2005, did anyone from Sunoco after that tell you what was going to happen or what the process was with regards to what agreement would be effective for Mobil sales?

A. Yes. What was supposed to happen, the way it was outlined to us, was that we were going to sign the assignment of --

Q. Can I stop right there?

A. Sure.

Q. I understand you explained to me what the process was supposed to be before you signed the assumption and assignment agreement.

My question is now after you signed the assignment and assumption agreement, now you stepped in the shoes of Peninsula Oil, did anyone from Sunoco after that date tell you what the process would be?

A. Yes.

Q. Who?

A. We worked with Dolores Love in an attempt to develop a schedule to convert these locations from Mobil over to Sunoco and as we discussed previously, prior to signing that amendment, it was contemplated that those gallons would then be transferred to our Sunoco agreement and this Mobil agreement was going to be allowed to expire and we would conduct business under our Sunoco agreement for Mobil business until such time as the Mobil gallons became Sunoco gallons.

Q. Between September 15th, 2005, and November 2nd, 2006, did you ever receive a letter from Sunoco telling you that it was non-renewing the Mobil branded distributor agreement?

A. No, it wasn't put to us that it would renew. It was put to us that it was going to expire.

Q. Did you ever receive a letter from Sunoco sent pursuant to its obligations under the Petroleum Marketing Practices Act informing you that Sunoco was non-renewing the Mobil branded distributor agreement?

A. I don't know that it would even be possible because PMPA requires greater than 30 days' notice and the agreement at the time we signed it was due to

expire in 30 days.

Q. Whether or not it was possible or not, did Sunoco, to your knowledge, did Sunoco ever send you a letter purporting to attempt to non-renew the Mobil branded distributor agreement prior to Plaintiffs' Exhibit 44?

A. I don't know.

Q. Who in your organization would you ask to find out the answer to that question?

A. Well, this letter was addressed to Bill Sweet. It would have gone to one of the principals of the company.

Q. You are not here as a representative of the company.

MR. HUTCHISON: Yes, he is.

BY MR. YOUNG:

Q. As representative of the company, do you know whether you received such a letter?

A. As a representative of the company, I don't know that we did.

Q. So you would ask Mr. Sweet if you wanted to find out the answer to that question?

MR. HUTCHISON: Objection.

THE WITNESS: I would ask my two

partners, the other two principals in the company, if either of them had seen one.

BY MR. YOUNG:

Q. If Sunoco had sent such a letter, would you expect it to exist within the Sweet Oil or GLeS organization as it exists today?

A. If it had existed at the time, regardless of which principal that it would have been addressed to, I'm sure that all three principals would have received copies of it.

Q. Do you think it would still exist within Sweet Oil's possession today?

A. I don't know that it ever existed.

MR. YOUNG: I'd make a request on the record at least that it be produced if it exists, if you determine that exists.

MR. HUTCHISON: This is a letter from Sunoco?

MR. YOUNG: Any letter prior to November 2nd, 2006 purporting to terminate or to non-renew, that expresses Sunoco's intention to non-renew the Mobil branded distributor agreement written pursuant to the Petroleum Marketing Practices Act.

THE WITNESS: I know that they definitely sent us non-renewal mutual cancellations for the Coastal and Sunoco agreements, but I don't recall ever seeing a letter for the Mobil agreement.

BY MR. YOUNG:

Q. You don't recall ever having signed a mutual cancellation agreement for the Mobil branded distributor agreement?

A. No.

Q. No, you don't recall or no, you didn't sign one?

A. No, I didn't sign one. I signed the Coastal and the Sunoco agreement.

Q. In answering that question, you're speaking on behalf of the corporation Sweet Oil; correct?

A. Yes.

Q. Were you supplying the Duck-In #2 Mobil with product up until you sold the assets to GPM?

A. Yes.

Q. And after January of 2007, what brand of motor fuel did you sell to the Duck-In Mobil?

A. For a period of time between when Sunoco told us to stop supplying him Mobil and our closing with GPM, they were unbranded, they had no brand, and then

GPM later branded them -- I'm not sure if it was Valero or Exxon. I'm not sure. I know GPM has branded them since, but I don't know what it is now.

Q. Did you de-identify the Duck-In Mobil?

A. Yes, we de-identified all three Mobils.

Q. Were they all done at the same time?

A. Yes.

Q. So roughly January/early February 2007?

A. Yes.

Q. And when you said you de-identified all of them, you physically went in or your contractors physically went in and removed all indicia of the Mobil trademark, tradename, correct?

A. Yes, that's correct.

MR. YOUNG: Why don't we take a break. I think we are just about finished.

(Recess.)

BY MR. YOUNG:

Q. Mr. Greco, in response to some of Mr. Storm's questioning, he asked you about the offers that you made to the plaintiffs to change their brands; correct?

A. Yes.

Q. And one of them was if they didn't convert to Sunoco, you offered the other brands that you could

offer, such as Exxon, BP, CITGO?
A. Correct.
Q. If I understand your testimony correctly, did you offer to them that if they accepted one of the brands that you offered and continued to purchase through you, that you would pay the penalty to Sunoco?
A. As part of rebranding, we agreed that we would absorb that cost, yes.
Q. Why did you do that?
A. As incentive to get them to continue to stay with us.
Q. And it was your understanding that if they chose not to go to Sunoco, that the penalty would have to be paid?
MR. HUTCHISON: Objection.
THE WITNESS: It was our understanding that it was their obligation, but if we could continue to supply them, whether it be Sunoco or any other brand, then we would be -- we were willing at that time, and we made them an offer in writing, to pay that expense on their behalf.
BY MR. YOUNG:
Q. It was your understanding that under the dealer agreement you had with Delmar Mobil or BCG,

Inc., and Chesapeake Products & Services, that if they chose not to go with Sunoco and went with another brand, that that penalty would be due?

MR. HUTCHISON: Objection.

BY MR. YOUNG:

Q. Under the Tosco distributor incentive program?

MR. HUTCHISON: Same objection.

THE WITNESS: It was my understanding that if they were no longer Mobil or Sunoco, as successor to Mobil, that that money would have to be paid back by them.

BY MR. YOUNG:

Q. To you?

A. To you.

Q. Under your agreement to you; correct?

A. Yeah. The agreement that was assigned to us from Peninsula stated that any obligation that we had to pay you would be reimbursed by them. So ultimately it would be their expense.

Q. Ultimately. But in looking at the particulars of the contractual relationships, that penalty would be due under your dealer agreement with them; correct?

A. Yes.

MR. YOUNG: That's all I have.

MR. HUTCHISON: Anything else?

MR. STORM: Yes, a couple.

BY MR. STORM:

Q. This issue about the credit card processing in June, that came to a head in June of 2006, did that involve what's known generally as electronic point of sale equipment?

A. Yeah. The point of sale equipment is the cash register or whatever processor that, whether the card is accepted inside or outside at the pump, it processes through the point of sale.

Q. So it is part of that whole generic point of sale equipment?

A. Well, it's not generic. Every manufacturer makes different types and --

Q. When I was talking about generic, I was talking about, when we are talking about electronic point of sale equipment, this would be a part of that, or not?

A. I'm not sure if I follow exactly the question. If you are using point of sale as just a broad term as any type or any manufacturer, then yes.

Q. Did you ever offer to pay for that, the $4,500?

Mark Greco

A. I don't believe we did, no.

Q. And you didn't undertake to install it; right?

A. No.

Q. Let me direct your attention to the distributor agreement, the Tosco distributor agreement, Exhibit 8. Page 16 of that agreement, Paragraph 15 (B) says, "Distributor shall install or cause to be installed approved electronic point of sale equipment at the stations for the processing of credit card and debit card transactions."

Do you see that?

A. Yes.

Q. You never did that, did you, at this site?

A. This contract preceded us.

Q. I understand. But this was the contract that was assigned to you by Peninsula, was it not?

A. Yes. At the time that this contract was signed, whether by Peninsula or the dealer, by some method, there was an approved POS installed at the site, which operated from 2002 until this end of life issue occurred.

Q. And who had installed that?

A. Again, it happened many years before we came into the picture.

Q. But at some point you are notified by Sunoco that this site has to have revised POS equipment?

A. The notices actually came in the beginning from ExxonMobil, and they came from ExxonMobil to Peninsula prior to us and eventually to us and then additional notices from Sunoco to us.

Q. But my client didn't have any agreement with ExxonMobil, did it, as related to that site at Delmar?

A. I don't believe so.

Q. And you didn't either, for that matter, you had an agreement with or Peninsula had an agreement with Tosco; right?

A. Correct.

Q. Is it normal practice for distributor agreements like this, meaning Exhibit 8, for there to be a schedule of sites and the schedule gets modified over the years as sites get added or deleted?

A. All sites have to be approved by the oil companies. Generally what gets modified is the volume schedule, how many gallons and where it is coming from.

Q. And the company then has to authorize, for example, if you were going to go to Sunoco with a proposed site, Sunoco would have to approve that site and then that site would get added as a site that was

included in your distributor agreement?
A. Yes.
Q. Correct?
A. Yes.
Q. Was there a fee that was associated with the Mobil sites for a monthly fee related to the processing of cards?
A. There's a transaction fee, but I don't know if there's a monthly fee. I'm not sure exactly what you are asking.
Q. Here is what I am trying to figure out. If you go back to the end of this exhibit, starting at Page 47, there's something called maintenance and information services agreement for electronic point of sale terminal and related equipment.
MR. HUTCHISON: Now you are talking about Bates stamp 47?
MR. STORM: Yes.
BY MR. STORM:
Q. It identifies the parties as Tosco, Peninsula Oil as the system user; okay?
A. Okay.
Q. And then attached to that is an Exhibit A, which identifies certain of the locations, and I guess

those were the locations that were already in place with Peninsula at the time that this agreement was signed back in October of 2000.

Do you see that?

A. Okay.

Q. And included there is Deluxe Dairy, which I guess was the location we talked about earlier; right?

A. Yes.

Q. And Duck-In #2?

A. Right.

Q. Millsboro Mobil, Berlin Uncle Willie's and Laurel Uncle Willie's; right?

A. Yes.

Q. Those, I guess, were sites that were operated by Uncle Willie that Peninsula operated directly?

A. Uh-huh.

Q. Right?

A. I don't know if they operated directly or through dealers or what method?

Q. It talks about an EPOS fee of 140 a month for owned equipment and 75 a month for leased equipment. Do you see that?

A. Yes.

Q. And was that charged to those sites, do you

know?

A. I don't know.

Q. Because what I'm confused about is under 3.1, going back to Page 47, it says that Tosco agrees to maintain the Tosco authorized equipment set forth in Exhibit A for use by system user to access the Tosco EPOS program at the marketing premises and that the system user will pay the rate, the services rate set forth in Section 3.3, and the system user agrees that Attachment A may be amended from time to time by Tosco.

Do you see that?

A. I think what this is talking about, and I'm not sure -- I wasn't a party to this agreement at the time, but it appears that this is a fee for Tosco-owned equipment or Tosco equipment that's leased to the dealer. At this location, the dealer happens to own his own equipment, so this doesn't really apply.

Q. Wasn't there an EPOS fee, though, for owned or leased equipment that was like an access fee?

A. There may have been a VSAT rental fee or something like that, but not an EPOS fee.

Q. If you go to 5.3 it says, "Notwithstanding Section 5.1, this agreement shall automatically terminate," and then it goes to subpart B, "in the

event system user" -- meaning Peninsula -- "elects not to participate in the Tosco credit debit card program at the marketing premises."

Do you see that?

A. Yes.

Q. So this certainly seems to imply that the system user has that election to participate or not participate?

A. I guess that's possible, yes.

Q. Was this part of the agreement, do you know, that was assigned to you by Peninsula?

A. Yes. This agreement was assigned to us -- now wait a minute. No, I don't believe it is. It says the term of this agreement was to go through September 30th of 2010. We didn't take any agreement that went through 2010. Our agreement expired in September of 2005.

Q. Well, if you look back -- actually that's an interesting question also, because if you look back at the page that's Bates stamped 07 of this same exhibit, distributor had one additional renewal term commencing on 10-1, 2005 and ending on 9-30, 2010, provided, and then it goes on, and has provided that the agreement, distributor shall not have been previously non-renewed.

Distributor shall prior to commencement execute Tosco's then current Mobil branded distributor agreement. Do you see that?

A. Uh-huh.

Q. A Mobil branded distributor agreement wasn't offered to you to continue after 2005, was it?

A. Correct.

Q. Mr. Young asked you a couple questions about the debranding of the site, and my clients had actually inquired of you in April of 2006 pursuant to Exhibit 24, had they not, asking when do you intend to remove the Mobil brand from our Delmar location?

A. Okay.

Q. And then I think they asked you that again on May 22nd, pursuant to Exhibit 32, when do you intend to remove the Mobil brand, do you see that?

A. On May 22nd? What exhibit number is that?

Q. That's 32.

A. Yes, both of these letters came from Charlie, and I believe during this same time I was still negotiating with Bill for furnishing him information from Sunoco with fee schedules and satellite fees and whatever else was involved in the potential conversion. So the reason that it wasn't scheduled is because we

were still talking to them about the possibility of converting.

MR. STORM: I think that's all I have.

MR. HUTCHISON: Nothing.

COURT REPORTER: Reading and signing?

MR. HUTCHISON: Yes, we will read and sign.

(Witness excused.)

(The deposition concluded at 5:10 p.m.)

I N D E X

E X H I B I T S

E X H I B I T S (cont'd):

PLAINTIFF'S DEPOSITION EXHIBITS		MARKED
13	Letter dated February 21, 2008, from Mr. Sanderson to Mr. Hutchison, with attachments	81
14	Letter dated 3/15/06 from Charlie Glenn To GLeS	106
15	Letter dated March 20, 2006, from Mr. Greco to Chesapeake Products & Services, Inc.	106
16	WSFS Bank Statement, SO 000092	110
17	E-mail, SO 000120 through SO 000122	111
18	E-mail, with attachment, SO 000123 through SO 000125	115
19	E-mail, SO 000129	116
20	E-mails, with attachments, SO 000144 through SO 000147	118
21	E-mail, SO 000149 and SO 000150	118
22	E-mail, SO 000169	119
23	E-mail, SO 000198 and SO 000199	120
24	Letter dated 4/18/06, SO 000203	121
25	E-mail string, SO 000217 and SO 000218	121
26	E-mail, SO 000219	122
27	E-mail string, SO 000232 through SO 000236	123
28	Letter dated May 16, 2006, with attachment, SO 000246 through SO 000266	123

E X H I B I T S (cont'd):

PLAINTIFF'S DEPOSITION EXHIBITS		MARKED
29	UPS receipt and letter dated May 9, 2006, SO 000243 through SO 000245	124
30	E-mail string, SO 000268	126
31	E-mail, SO 000270	128
32	Letter dated 5/22/06 from Charlie Glenn to GLeS	129
33	Letter dated June 5, 2006, SO 000271 through SO 000272	130
34	E-mail, SO000339 and SO 000340	134
35	Letter dated 6/20/06, SO 000343	134
36	E-mail, SO 000344	136
37	E-mail string, SO 000346 through SO 000348	137
38	E-mail, SO 000350	138
39	E-mail string, SO 000358 and SO 000359	139
40	E-mail, with attachments, SO 000379 through SO 000392	139
41	E-mail string, SO 000383 through SO 000390	140
42	E-mail, SO 000405	143
43	Announcement dated August 30, 2006, SO 000408	144
44	Letter dated November 2, 2006, SO 000074 through SO 000084	151
45	Letter dated November 27, 2006, SO 000422 and SO 000423	151

E X H I B I T S (cont'd):

PLAINTIFF'S DEPOSITION EXHIBITS		MARKED
46	Letter dated January 23, 2007, SO 000430 through SO 000432	152
47	Letter dated January 29, 2007, with attachments	149
48	Letter dated February 7, 2007, from Mr. Storm to Mr. Hutchison	149
49	E-mail string, SO 000435 through SO 000437	150
50	E-mail, SO 000438	156
51	E-mail string, SO 000441 and SO 000442	165
52	E-mail string, SO 000443 through SO 000445	168
53	Distributor Branded Motor Fuel Agreement, SO 000068	168
54	Peninsula documents, SO 000094 through SO 000119	169
55	Check 10761 and SO 001052 through SO 1078 and Check 10913	184
56	Fax, SO 001095 through SO 001098	198
57	Sweet Oil Company Account Quick Report, SO 001094	199
58	Fax cover sheet, dated 12-6-06 from Chad To Shelly Domingo	199
59	Letter dated August 16, 2005, from Mr. Williams to "Dear Retail Dealer"	200
60	Fax dated 9-19-05 from Chad to Shelly, SO 000809 and SO 000810	200
61	SO 001013 through SO 001020	201

E X H I B I T S (cont'd):

PLAINTIFF'S DEPOSITION EXHIBITS		MARKED
62	Fax, SO 001039 and SO 001040	202
63	Nine-page document, first being Check Stub No. 7305	203
64	Documents, SO 000473 through SO 000475	203
65	Memo dated 3/15/06, SO 000542	204
66	Termination letter dated 7/11/06	102
67	Letter dated July 11, 2006, from Mr. Greco to Chesapeake Products & Services, Inc., three pages	204
68	Letter dated July 19, 2006, SO 000556	207
69	Letter dated 3/15/06 from Charlie Glenn to GLeS	212
70	Letter dated 7/20/06 from Charles Glenn To GLeS	212
71	Memo dated 3/16/06 from Chad to Coraluzzo Dispatch	214
72	Laurel Oasis CITGO Daily Sales Reconciliation, SO 000572 through SO 000807	215
73	Indemnity Mortgage Assignment and Assumption Agreement, SO 000085 through SO 000088	77
74	Documents, SO 001160 through SO 001184	218
75	GLeS customer Quick Report	84
76	Mutual Cancellation Agreement	158
77	Statement from The Bank of Delmarva	218
78	Tosco Distributor Image Incentive Program Agreement	221

I N D E X (cont'd):

REPLACE THIS PAGE
WITH THE ERRATA SHEET
AFTER IT HAS BEEN
COMPLETED AND SIGNED
BY THE DEPONENT

State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Terry Barbano Burke, RMR-CRR and Notary Public, do hereby certify that there came before me on Wednesday, March 26, 2008, the deponent herein, MARK GRECO, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Terry Barbano Burke, RMR-CRR
Certification No. 233-RPR
(Expires January 31, 2011)

DATED: